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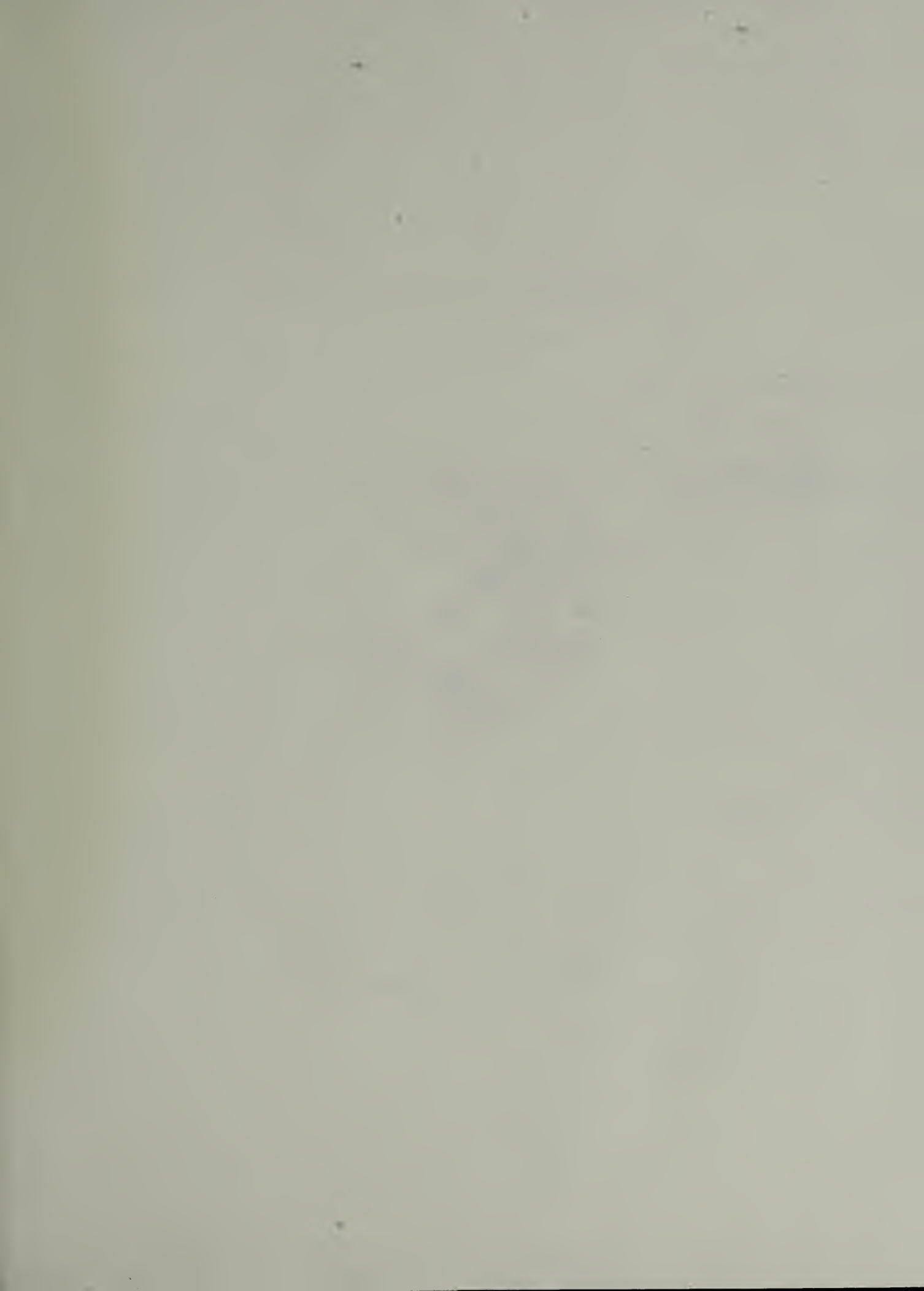
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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 3191

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JUNE 6, 2007

16 4:10 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

MEMBER ABSENT

SENATOR ROY ASHBURN, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

PRESTON P. DuFAUCHARD
Commissioner of Corporations

KATHERINE L. ALBIANI, Member
Board of Governors
California Community Colleges

JOHN W. KOEBERER, Member
Board of Governors
California Community Colleges

ROSE D. GUILBAULT, Member
Board of Governors
California Community Colleges

1 JONATHAN LIGHTMAN

Faculty Association of California Community Colleges

2 WILLIAM C. De La PENA, M.D.

3 The Regents of the University of California

4 BRUCE D. VARNER

5 The Regents of the University of California

6 LAKESHA HARRISON, President

AFSCME Local 3299

7 FAITH RAIDER, on Behalf of TONI HOYLE

8 AFSCME Local 3299

9 WILLIE PELOTE

10 AFSCME

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The Senate Rules Committee will convene.

I am going to ask Mr. DuFauchard to come up. We'll take you out of order, since you're back for your second time, and we don't want to give you any time to run out of the building.

Last month, or about four weeks ago, when you came, we had many questions about how you administer the pay-day loan law. So, we asked you to think about that and return today.

Since then, you've answered additional, and questions I believe I have better understanding.

It's also not lost on me that when you met with consumer advisory group, they were very impressed by your presentation and the discussion that ensued, and how you intend to enforce the law.

So, I just have a very few questions. I'm not sure everybody shares my enthusiasm for pay-day loans, but then again, I'm Chair and --

SENATOR CEDILLO: I do.

CHAIRMAN PERATA: Thank you.

What's the definition of "per violation?"

MR. DuFAUCHARD: Per violation, it will depend on the facts, but per violation is something that, if we see a contract, for example, that doesn't contain a specific disclosure, then every contract that was entered into that

1 doesn't contain the required disclosure would be a violation.
2 It would be a per violation.

3 Each separate contract would be a separate
4 violation.

5 CHAIRMAN PERATA: When would a contract be null
6 and void?

7 MR. DuFAUCHARD: I can give you a specific
8 example.

9 We're asking for the voiding of a contract, I
10 guess 15 separate contracts, in a Desist and Refrain action
11 we're engaged in now.

12 The provision of the law that permits the
13 Department and the Commissioner to void a contract has a
14 standard of willfulness: willful violations, willful
15 overcharges.

16 There is a situation that we learned about
17 through our examination process where a licensee was making
18 contracts with customers before they closed, prior pay-day
19 loans. So in other words, they were -- they had a pay-day loan,
20 the customer had a pay-day loan outstanding. Prior to the
21 pay-off of that pay-day loan, the licensee would enter into
22 another pay-day lending contract, which is a direct violation of
23 the law.

24 We saw that happening not once, not twice, but
25 several times: 15 separate contracts in multiple locations for
26 this particular company. We felt that rose to the level of
27 willfulness that we intend to prove.

28 And we're asking to void those contracts, and

1 we're asking for fines of \$2500 per contract.

2 CHAIRMAN PERATA: Okay.

3 And you asked for three more auditors in the
4 budget, or the Governor's proposed three.

5 MR. DuFAUCHARD: Yes.

6 CHAIRMAN PERATA: We just added five more in
7 conference committee.

8 On the assumption that Governor approves that,
9 what would you do with them?

10 MR. DuFAUCHARD: It would be my expectation that
11 we would do more follow-up.

12 Right now, our exam focus and our exam priorities
13 is to go out and complete our visits for all of the stores, all
14 of the 2500 locations, but we haven't had a whole lot of staff
15 to do follow-up visits shortly after we conduct the exam, just
16 to make sure that the violations that we have noted are
17 corrected.

18 But that would be our intention, to use
19 additional resources to do follow-up exams.

20 CHAIRMAN PERATA: Senator Padilla.

21 SENATOR PADILLA: Again, I appreciate the
22 supplemental information that's come since the last hearing.

23 The one question I still have remaining, just
24 from the folks that I've talked to, both sides of the pay-day
25 lending issue, and industry and outside of the industry side, is
26 the unique problem that they have identified.

27 It's not so much a that a single loan gets
28 somebody in trouble financially, if you will.

1 But it's when one loan is due, so you run across
2 the street to another pay-day lending institution and take out a
3 slightly bigger loan to pay off the initial loan at the higher
4 interest rate. And then, they're in a pinch on the second loan,
5 so then they start a cycle.

6 Or even worse, they're taking out two, three
7 pay-day loans nearly simultaneously. So that from a record
8 keeping standpoint, from a credit reporting standpoint, it's not
9 raising a red flag, but can quickly get somebody into hot
10 water.

11 Is this something you're monitoring? What could
12 further be done to sort of track this dynamic --

13 MR. DuFAUCHARD: Yes. We --

14 SENATOR PADILLA: -- to help consumers?

15 MR. DuFAUCHARD: I'm sorry for interrupting your
16 question.

17 But we -- this is something that we're looking at
18 specifically in connection with the December 1 report that we
19 have due to the Legislature.

20 This is something that we've tried to assess with
21 our questionnaires to the licensees, specifically relating to
22 the December 1 report.

23 It is an area of concern of mine and of the
24 Department. We hope to make specific recommendations on ways we
25 can monitor that, as well as ways we can perhaps avoid that.

26 You know, one of the things we -- I want to do is
27 to have educational materials, a brochure, or whatever, at the
28 licensees' locations, basically suggesting that people act

1 responsibly with taking out these loans.

2 But short of that, we're looking at ways that we
3 can prevent that from happening, and whether that's amendments
4 to the laws, or some other examination technique that we can
5 engage in.

6 SENATOR PADILLA: So, this dynamic will be
7 specifically addressed in the December 1st report?

8 MR. DuFAUCHARD: Yes.

9 SENATOR PADILLA: Thank you.

10 CHAIRMAN PERATA: Well, I have been impressed
11 with your responsiveness. I didn't expect you to come to the
12 job being teed up and ready to deal with pay-day loans. But
13 once you realized the importance to at least one Member, you got
14 in.

15 I've been impressed. You've been what we've been
16 looking for.

17 I just offer, out of hand, an offer to help if
18 you need it. We do have a lot of energy, time, and people hours
19 invested in this, so we will be watching it.

20 We've been talking about some of the other things
21 that may be beneficial to the industry.

22 So, I want to thank you for that.

23 If you have any closing comments, you may make
24 them.

25 MR. DuFAUCHARD: I don't, Mr. Chairman.

26 CHAIRMAN PERATA: You learn fast.

27 [Laughter.]

28 CHAIRMAN PERATA: I've been asked about the use

1 of the term "routinely." It implies more than once?

2 MR. DuFAUCHARD: Yes.

3 CHAIRMAN PERATA: Is it first finding a
4 violation?

5 MR. DuFAUCHARD: We've implemented a new policy,
6 as I think I've suggested, where we're having zero tolerance for
7 first-time violations. And we'll implement more direct
8 enforcement actions for second time violations.

9 And I fit "routinely" into second time.

10 CHAIRMAN PERATA: All right.

11 Call the roll, please.

12 SECRETARY WEBB: Cedillo.

13 SENATOR CEDILLO: Aye.

14 SECRETARY WEBB: Cedillo Aye. Dutton.

15 SENATOR DUTTON: Aye.

16 SECRETARY WEBB: Dutton Aye. Padilla.

17 SENATOR PADILLA: Aye.

18 SECRETARY WEBB: Padilla Aye. Perata.

19 CHAIRMAN PERATA: Aye.

20 SECRETARY WEBB: Perata Aye. Four to Zero.

21 CHAIRMAN PERATA: Senator Ashburn's absent but
22 sends his best wishes.

23 MR. DuFAUCHARD: Thank you.

24 CHAIRMAN PERATA: Thank you, sir.

25 MR. DuFAUCHARD: Thank you.

26 CHAIRMAN PERATA: If anyone's here for Sherry
27 Mehl, Bureau of Automotive Repair hearing, I have to disappoint
28 you. She will be heard on the 20th of June. Her name was

1 mistakenly not removed from the Daily File, for which we
2 apologize. She knew it.

3 Then we have three Community College Board of
4 Governors: Kay Albiani; Rose, I've seen your name so often; and
5 John Koeberer.

6 Come forward all at once. If one you have can't
7 answer the question, we'll let the other one answer it.

8 KGO's been going down hill ever since you left

9 MS. GUILBAULT: I'm glad you said that, but you
10 never said anything when I left.

11 CHAIRMAN PERATA: Oh, yes, we did.
12 Unfortunately, they fired in general manager.

13 Why don't we go from right to left, left to
14 right. We're not going to start in the middle.

15 Go ahead and begin, if you'd like to introduce
16 yourself.

17 MS. ALBIANI: Good afternoon, Mr. Chair and
18 Committee Members.

19 I'm Kay Albiani, and I am a resident of Elk
20 Grove. I have five children and fourteen grandchildren. That's
21 my great pride.

22 I also have served 18 years on the Elk Grove
23 Unified K-12 Board, and I was President of the California School
24 Boards Association in 1985.

25 And I -- as my kids grew up, I decided I should
26 graduate and move on to community college. And I've always had
27 a great respect for community colleges, so I ran for the
28 Community College Board, which I was elected to, and I've served

1 on that board for 10 years. It's Los Rios Community College
2 Board, which is -- Los Rios is the second largest community
3 college in the State of California, and about the fifth largest
4 in the nation. And it's excellently -- a very well run
5 organization.

6 CHAIRMAN PERATA: What colleges are in that
7 system?

8 MS. ALBIANI: American River, Folsom Lake,
9 Sacramento City, and Consumnes River, and then we have five
10 centers.

11 CHAIRMAN PERATA: Thank you.

12 MS. ALBIANI: So, and three years ago I was
13 appointed to the Board of Governors, and I was before you two
14 years ago. So, I'm back again.

15 CHAIRMAN PERATA: We had fun.

16 MS. ALBIANI: Yes, I thought, well, I'd give it
17 another whirl. So I went for a reappointment, was reappointed
18 by the Governor. And so, I served about two years as Vice Chair
19 of the Board. Now I'm Chair of the Board.

20 And we're doing great things. We're working very
21 hard.

22 Just for those of you that are interested, yes,
23 our Chancellor, Dr. Mark Drummond, is moving on back to Los
24 Angeles. And we do have process in place for an interim
25 Chancellor, and I provided to your Sergeant-at-Arms a copy of
26 our draft proposal -- I say "draft," because the whole board has
27 not seen it yet -- but that we will be using for our search.

28 So, I think that's all I want to say at the

1 beginning.

2 CHAIRMAN PERATA: Okay.

3 MR. KOEBERER: Good afternoon, Mr. Chairman and
4 Members.

5 My name is John Koeberer. I live in Redding,
6 California and operate a company called the California Parks
7 Company. We provide hospitality services at state and national
8 parks, and county parks, regional parks, throughout most of
9 California.

10 I'm a former Chair of the California State
11 Chamber of Commerce and serve on the California Tourism
12 Commission. Tourism is my business.

13 However, I did serve on a rural school board when
14 my children were young.

15 I have a tremendous interest in the community
16 colleges because many years ago, I entered Santa Rosa Junior
17 College rather undirected, and with very little resources, and
18 very challenged. And certainly at that time, I could have never
19 envisioned that I would be before this body, seeking your
20 confirmation.

21 But because of an excellent, diversified staff at
22 Santa Rosa Junior College, I matured. And the great faculty and
23 great counselling I received there, you know, I just really am
24 in debted to the community colleges.

25 We're a multi-missioned higher educational
26 institution, the largest certainly arguably in the world. And
27 we serve a variety of different constituencies, and I think do a
28 very credible job in everything we do.

1 We teach basic skills to 80 percent of our
2 entering students at community colleges, and we train
3 correctional officers, and instruct inmates.

4 We teach English as a second language, and make
5 college education attainable and accessible to hundreds or
6 thousands of people.

7 I am currently serving as the Chair of the Career
8 Technical Education Committee of the Board of Governors.
9 Because of my business background, I'm acutely aware of what's
10 happening with the outflow of jobs and employers out of
11 California, and feel this is a very important part of what we do
12 at community colleges.

13 I would be proud to continue to serve. Thank
14 you for the opportunity to comment.

15 CHAIRMAN PERATA: Thank you.

16 MS. GUILBAULT: Good afternoon, Mr. Chair. It's
17 been a pleasure to see you again. It's been a while.

18 I'm from the Bay Area -- and also the Members.

19 I am from the Bay Area. I am an immigrant from
20 Mexico. I came to this country when I was five years old.

21 And like my colleague, John, was very undirected,
22 poor counselling, and parents who didn't understand the system.
23 And so, I wound up in a community college.

24 I went to Palomar Community College in San Diego
25 County, which is where I received excellent education, and a
26 direction, and the ability to progress in my career, which
27 originally was in broadcasting, television broadcasting, where I
28 had the pleasure of meeting the Chairman.

1 And today, I am currently a Vice President at AAA
2 in San Francisco.

3 I have spent most of my public service career
4 volunteering for educational organizations, because I have such
5 a strong commitment to education, and knowing that education is
6 what levels the playing field for people like myself, and
7 underserved other students. I was part of the Puente Project.
8 I was on that board. I was also -- I'm currently on the Board
9 of USF, the University of San Francisco, was on a Presidential
10 Commission for Hispanics for Educational Excellence in
11 Washington, D.C.

12 I would love to be a supporter and an advocate in
13 my position on the board for underserved students to go to
14 community college first of all, and to be able to transfer to
15 four-year institutions, whether they be state colleges or
16 universities, or private colleges.

17 I'm also, as a business person, very concerned
18 about the technical educational aspect, and knowing the kind of
19 people that we have that come in, and knowing that a lot of them
20 just don't have the kind of basic skills that we need in our
21 business, would love to be a strong supporter on the Community
22 College Board for technical education also.

23 And it's -- I would be very pleased to continue
24 my role on the board. Thank you.

25 CHAIRMAN PERATA: Thank you, and thank you all.

26 I think the first question I'd like to ask, and
27 I'll ask it of Ms. Albiani, since you've been on a local
28 community college board, what's the relationship between the

1 board you're on now and the one that you were on?

2 And are there things that you can or should be
3 doing here that they can or won't be doing there?

4 Why aren't you superfluous here, is what I'm
5 asking?

6 MS. ALBIANI: Well, I think I'm fortunate,
7 because I serve on a very excellently run -- both financially,
8 and academically, and politically -- district.

9 We are -- work very closely with the Board of
10 Governors, the district does. And we have aligned our strategic
11 plan in Los Rios with the strategic plan of the state. And we
12 work very closely on issues.

13 There are certain issues, of course, that in the
14 end that we deal with on the local level that are different than
15 the state level, because the state level is mostly overseeing
16 policy. But one of the advantages we have is, that we
17 understand -- I can, and my chancellor can, bring back the
18 policies to our local district and be sure that we're in
19 compliance and doing things correctly.

20 And we also are very innovative in our programs,
21 and we have several model programs throughout the -- our
22 district in Los Rios, one of which is the Nursing Initiative,
23 which we started with collaborative work with Sutter Hospital
24 and many of the other hospitals in the area. And that's being
25 used as a model throughout the state for -- adopted by the Board
26 of Governors to help start other programs to increase our
27 nursing populations.

28 CHAIRMAN PERATA: You have a local strategic

1 plan, and then there's the state.

2 MS. ALBIANI: Correct.

3 CHAIRMAN PERATA: Who goes first? Who aligns
4 with which?

5 MS. ALBIANI: Well, actually Los Rios had our
6 strategic plan in place for like ten years.

7 Last year we adopted the state's strategic plan
8 for the very first time. The state system had no plan previous
9 to that.

10 So, we all had our input from the field. And so,
11 through that, obviously we gave a lot of input.

12 But once the state's strategic plan was adopted,
13 we aligned ourselves, at Los Rios, with that. And we found --
14 so, it was actually Los Rios first and then the state second.

15 CHAIRMAN PERATA: But they are aligned with the
16 state in effect?

17 MS. ALBIANI: Correct.

18 CHAIRMAN PERATA: You talked about basic
19 skills. I'm interested in a number of things.

20 In last year's budget there was \$10 million in
21 there for high school exit exams, for community colleges to help
22 high school kids who didn't pass the exit exams, so you didn't
23 have 40-year-olds in high school.

24 How is that money being used?

25 MS. ALBIANI: Well, some -- and again, it's given
26 out on different colleges on a bidding process.

27 CHAIRMAN PERATA: Did you get some where you were?

28 MS. ALBIANI: Los Rios? Well, we don't have that

1 money, but we do have a program where we have without -- within
2 our own budget, because we have our own basic skills initiative
3 that we developed actually three years ago so -- to deal with
4 the basic skills and the students, that student population.

5 But statewide, we've got the same programs going
6 in different -- other different campuses throughout the state.

7 But that, again, is a local control issue. So,
8 they choose if they want to do it or not, and then the funding
9 is competitive.

10 But we do encourage it, and most districts are
11 doing a lot of work in that area. A lot of districts are
12 actually going down to the middle school and having -- starting
13 with the middle school programs. They're having this -- I'm
14 trying to think of the name of it. I think it's middle school
15 college.

16 I know over in the Riverside area, they're doing
17 a lot of that so that they can start integrating the students at
18 a young age into the -- to try to alleviate the basic skills
19 program.

20 And we're also reaching out -- I mean, that we're
21 talking about -- this is going off track a tad bit -- but I just
22 returned from going down to Blythe.

23 CHAIRMAN PERATA: That's actually right on track.
24 Go ahead.

25 MS. ALBIANI: To the program in the prisons.

26 CHAIRMAN PERATA: Yes.

27 MS. ALBIANI: And I attended the -- and handed
28 out diplomas at the Ironwood and Chuckawalla Prisons. We had

1 like a hundred -- two hundred -- no, I think a hundred at one
2 prison, and about seventy-five at the other. And it was a very,
3 very impressive ceremony.

4 And these -- a lot of them, some -- most of them
5 were young. Some were 40 years old and plus. But they, the
6 ones I spoke with out at the reception after, were all saying --
7 I had brought up the point that this was a good role model for
8 their families, because a lot of them still have contact with
9 their families and their children. And that -- they were
10 saying, in the yard when they're out, almost every one of the
11 fellows they talked to in a casual time will say at one point in
12 time that they wish they would have another chance at education,
13 at their basic skills, and they could learn all these.

14 So, I know we have a -- the community colleges
15 have a program with the Department of Corrections, a
16 collaborative program, and we're trying to start. And this will
17 be a model for us to take this program out. Because as we all
18 know, when you pull into a parking lot at a mall, and someone
19 pulls up next to you, you'd much rather have someone who's got
20 job skills, and a job, and a goal in life parking next to you,
21 rather than someone that you may decide that you are going to be
22 his job, and his money, and rob you or take your car.

23 So, we feel very strongly that it's important for
24 us to get in the community and try not only to educate them, but
25 to teach them life skills, and responsibility, and respect. And
26 I saw that yesterday.

27 CHAIRMAN PERATA: It's wonderful.

28 Then you'll try, through the state system,

1 encourage other --

2 MS. ALBIANI: We're going to try -- well, we're
3 trying to form collaborations with other -- we have actually
4 three other programs going that are also state funding. But
5 those programs, a pilot program, the funding runs out this
6 year.

7 We have it in Fresno, in West Kern, and Napa,
8 Santa Rosa. So, in those programs, we're -- we're basically
9 training correctional peace officers there, and so it's a little
10 different.

11 But down in Kern, we're working -- West Kern, we
12 have a program where we're taking parolees. And they go through
13 West Kern and get their skills up. And then they're guaranteed a
14 job in the oil fields. And it's very successful as well.

15 So, we're trying to take these programs and model
16 them, and talking to other districts. And this group down there
17 are willing to train the other colleges on how this goes about,
18 how you have to -- all the collaboration you have to have with
19 the prison system and all. But it's do-able, and that's one of
20 our directions we're heading.

21 CHAIRMAN PERATA: Any other jump in on the basic
22 skills?

23 MS. GUILBAULT: Just to say that within the basic
24 skill area, that we -- we are -- have about \$30 million that are
25 being allocated to the different districts to -- for them to do
26 some best practice programs, so -- and teacher training also.

27 And the teacher training is important because the
28 current professionals that are there have been trained to be

1 college, you know, teach college courses. And we have about 80
2 percent of the students that come into the community college
3 need basic skills. So, they -- we need to train them to be able
4 to teach basic skills, teach in a different way so that the kids
5 can be, you know, be up to par and be able to proceed.

6 And it's just not, you know, only for transfer
7 students, but also for students who are going to be taking
8 career technical education, because that's what's required in
9 the workplace also.

10 SENATOR PADILLA: Senators, questions? Senator
11 Dutton.

12 SENATOR DUTTON: Just a couple questions.

13 Last year we had a situation with Compton
14 Community College, and I believe we discussed it a little bit.

15 Could you give me kind of a status report on
16 where you think we're at with Compton, and what we can look
17 forward to here in the next couple of years?

18 MS. ALBIANI: Well, we actually have done a lot
19 of work this that area, as you know. I have a report here, if I
20 can find it, that I asked for, for you, and I will can be happy
21 to leave it. It kind of gives you chronology.

22 But right now, we're on track with Dr. Peter
23 Lansberg from L.A. is going to go over there and become the new
24 trustee. So, Tom Henry, who's been the person -- he's retiring
25 from the finance organization -- it's leaving my head right now
26 -- the one that comes in and audits, takes over as trustees for
27 schools. He was K-12, now they're doing it for community
28 colleges. This is first one.

1 But he's going to come in, work for us as a -- on
2 a consultant basis for if we see other colleges starting to have
3 their fiscal issues, and all, and help them get their -- their
4 cards in order.

5 But we feel like, from what we're understanding,
6 that student enrollment is -- starting to come back. Their bond
7 has -- we've been watching -- monitoring very closely their bond
8 monies, and they have provided -- I can tell you in a minute
9 what all they've been able to complete with their bond here.

10 They had -- they had their 200 -- their 100
11 million GO bond, and they were able to take -- oh, I have it
12 here somewhere -- anyway, they were to finish out the projects
13 that they had started at the -- with this money. So, it's been
14 completed.

15 And as you know, that they're under the approval
16 and the responsibility and functions of their operations of the
17 El Camino College, is actually their parent college. So right
18 currently, Compton is a center, and we would like to have it
19 eventually come back and go through the accreditation process,
20 and regain its accreditation so it can be a stand-alone college.
21 And that's going to take a period of time.

22 And so, during that period of time, we'll have a
23 special trustee in there.

24 SENATOR DUTTON: What is the anticipated length
25 of time? Do you have anything like a business plan, or a game
26 plan?

27 MS. ALBIANI: Well, on our plan, it's like five
28 years.

1 SENATOR DUTTON: Five years?

2 MS. ALBIANI: But, you know, that's going to
3 depend on a lot of other factors, because currently, their --
4 the status of their elected trustees is that, our special
5 trustee has assumed all of their legal rights. And we are
6 taking on the responsibility of the -- that, and trustees and
7 the personnel commission's roles.

8 So, it's all coming through this Peter Lansberg,
9 who's directly connected to the Board of Governors. So, we're
10 overseeing all that.

11 SENATOR DUTTON: And the students and so forth
12 that were there, we pretty much were able to take care of their
13 needs so that their education didn't get interrupted?

14 MS. ALBIANI: No, I would not -- I'll be honest
15 enough to say some that of their educations got disrupted, no
16 question.

17 But we stabilized it, and we're seeing the
18 enrollment come back. So, we feel that we'll be able to grow
19 the population back through -- we're doing a very assertive
20 communications program, and getting out in the community, and
21 going to the faith-based organizations to let them know what's
22 happening. And we've tried to keep all the community people in
23 the loop so that they'll understand what progress we're making,
24 and inviting a lot of people to come on to -- a very aggressive
25 campaign to get students to come over and talk to us at the
26 college -- talk to the people at the college so they'll know
27 what we have to offer.

28 And so, and we have our faculty stabilized. And

1 so, we feel that there's -- we're making very positive progress.

2 SENATOR DUTTON: Okay. I'd appreciate if you can
3 keep me posted as to the progress that we're making.

4 MS. ALBIANI: Okay, we'll do that, of course.

5 SENATOR DUTTON: Thank you.

6 SENATOR PADILLA: The only question I would add
7 is, we talked in the questionnaire, through your responses,
8 about financial aid and assistance to needy students.

9 And no where was there any comment or recognition
10 of AB 540 students.

11 So, I wanted to ask here for the Committee's
12 record your knowledge of AB 540 students, and any thoughts you
13 have on the policy?

14 MS. GUILBAULT: Is that undocumented?

15 SENATOR PADILLA: Yes.

16 MS. GUILBAULT: I believe that prior to my coming
17 on to the board, we voted to support the undocumented students'
18 participation.

19 SENATOR PADILLA: So, you agree with maintaining
20 that position and those policies?

21 MS. GUILBAULT: Yes, I do.

22 MR. KOEBERER: Yes, sir.

23 SENATOR PADILLA: Okay.

24 MS. ALBIANI: We reaffirmed that. We had a
25 discussion on that recently, and there's no -- no question that
26 that's within our very strong legislative agenda.

27 SENATOR PADILLA: Senator Cedillo.

28 SENATOR CEDILLO: I appreciate their support of

1 what was SB 160, the California Dream Act.

2 Your support is well stated, and it's well
3 appreciated.

4 SENATOR PADILLA: Before entertaining a motion, I
5 just again want to thank you for participating in the process
6 thus far via the questionnaire and responding to our questions
7 individually and collectively here in Committee.

8 I would like to recognize that as great as the UC
9 system is, and we have some folk here for confirmation for CSU
10 as well, it is the community college system in California that's
11 the work horse of higher education by sheer numbers of students
12 at various stages of their educational careers and professional
13 careers. That's the backbone of workforce preparedness in the
14 state.

15 So, the responsibility before you is not small by
16 any stretch.

17 MS. ALBIANI: Well, I'm just going to speak and
18 say I appreciate your acknowledging what we do, because I think
19 that's been a big hurdle we've had to over come in the last few
20 years, to have the business sector and the public really
21 understand what all we do do.

22 We do not only send students on to transfer,
23 which is a very important part of our mission, but we are also a
24 very strong economic force in the community. And I think our
25 new -- the way we're operating as a college system by working
26 collaboratively with our private sector people in the community
27 and the local level, most community colleges have a great
28 relationship with their -- the different business elements

1 within the community. And so, it's very important.

2 So, thank you for having your support for that.

3 SENATOR PADILLA: Are there members of the public
4 here to testify in support of these appointees?

5 MR. LIGHTMAN: Thank you, Mr. Chairman and
6 Members. Jonathan Lightman on behalf of the Faculty Association
7 of California Community Colleges.

8 We've worked a very long time with Kay Albiani,
9 and we have provided a letter in support of her reconfirmation.

10 And we also want to commend her for her
11 leadership. Under her leadership, the Board of Governors has
12 done many of the things you've heard, including prioritizing
13 basic skills and vocational education, as well as some of the
14 faculty priorities, including the part-time faculty office
15 hours, health benefits, and equity, as well as professional
16 development for all faculty.

17 Thank you.

18 SENATOR PADILLA: Thank you.

19 Other speakers in support? Anybody in
20 opposition.

21 SENATOR CEDILLO: Move the nomination.

22 SENATOR PADILLA: Mr. Cedillo moves confirmation.

23 SENATOR DUTTON: Could I have one clarification?
24 I apologize for that.

25 With regards to your financial assistance to
26 undocumented immigrants, did I hear you say that you all support
27 a continued policy that undocumented immigrants should get
28 financial assistance, or did I misunderstand?

1 MS. ALBIANI: No, you did not.

2 Why don't you all take that.

3 MS. GUILBAULT: We all agree.

4 MS. ALBIANI: Well, the way the bill is presented
5 is that they have graduated from a -- or at least attended a
6 high school within the community college -- within the system
7 within the state. So, they're residents all ready in the fact
8 that they've had their K-12 education. And many of them have
9 been here a long while.

10 And we also feel in the same vein as we do with
11 the -- with -- I hate to put them in the same category, but with
12 our inmate population. We'd rather have our populations being
13 educated and have skill basis rather than have them just
14 wandering the streets.

15 So, we feel that that's the rationale for
16 supporting the bill.

17 SENATOR PADILLA: Let me ask Mr. Cedillo to
18 clarify, because there may be confusion here between an
19 admissions or a tuition policy versus financial assistance --

20 MS. ALBIANI: No, I'm sorry. I'm the one that
21 got off on that. I am nervous.

22 SENATOR PADILLA: -- and what is current law is
23 versus the proposed.

24 SENATOR CEDILLO: Well, the proposal -- which is
25 supported, I have to tell you, both at the community college
26 level, at the CSU level, at the UC level, and the Student Aid
27 Commission. There's broad support, being driven in large part
28 by the Chamber -- is that students who have been here,

1 graduated, three years in our high schools, admitted, meet all
2 the academic criteria, should not be denied an opportunity to
3 participate in financial aid that we make and fund for every
4 high school student in the state.

5 We, in the Legislature, fund this money for every
6 high school student in the state, and these funds are
7 available. That it makes no sense to deny them an opportunity
8 to apply for those funds, state-only funds, when they're
9 available for all students, and when they reflect an investment
10 in future job participants of our community.

11 And so, we have a broad support, and we are
12 working with the Governor's Office. And hopefully, we
13 anticipate that we will have a new law at the end of this
14 year.

15 SENATOR DUTTON: I won't debate that with you
16 right now.

17 Why don't you go ahead with your motion.

18 SENATOR CEDILLO: Senator, I think the other
19 point is that, you know, they have not done anything other than
20 reiterate and practice the current law, which is the AB 540. I
21 was a co-author with Assembly Member Marco Firebaugh.

22 SENATOR DUTTON: It's one thing for them to
23 indicate to me that they're going to support the policies and
24 the laws as handed down by the Legislature, but that's not what
25 I understood. That's not what I just heard them say, though.

26 It sounded to me like they actually have more
27 than just the authority to enforce the law of the Legislature,
28 that they actually can adopt different types of policy.

1 Philosophically, some of us have a deeper problem
2 than others regarding this, especially recent legislation that
3 was just -- you know, we couldn't get out of committee, that
4 would actually give tuition and financial aid to members of the
5 military. And that's become a very hard thing for us.

6 I have no problems with somebody who is a legal
7 immigrant here in California to get all the benefits, and
8 privileges, and so forth.

9 But philosophically, we obviously have a
10 difference of opinion in that area, and that was where my
11 concern was.

12 It was based on what involvement you have going
13 beyond just the fact of the law. I mean, what is your role in
14 determining financial aid, and who receives it, and so forth?

15 MS. ALBIANI: We comply with the law, of course
16 we comply with the law as it is stated in the -- right now.

17 SENATOR DUTTON: So, if the Legislature ever
18 would pass legislation that would indicate that you have to be a
19 legal citizen of the country -- I'm not saying we are, because
20 obviously we're not any time in the near future -- but you
21 wouldn't have any trouble, then, supporting that law either?

22 MS. ALBIANI: Well, I think a lot of the people
23 that have philosophically problems with that, but if that's the
24 law, we would certainly enforce it and comply to the law, of
25 course.

26 SENATOR CEDILLO: And conversely, when the law
27 changes, which we anticipate.

28 MR. KOEBERER: Senator, I would just add that,

1 you know, I think a large majority of the business community
2 supports it just because we need to educate these people. We
3 need a ready labor force. They're continuing to grow in
4 numbers, and we're going to pay one way or the other if we don't
5 educate them.

6 SENATOR DUTTON: Well, what we really need, sir,
7 is we need an immigration policy that's actually adhered to,
8 that's enforced. And also that people stop trying to exploit
9 the immigrants that are coming into this country, and
10 encouraging them to break the laws. That's what we really need.

11 These same employers you're talking about,
12 they're actually more guilty, in my opinion, than the people
13 that they're enticing over here. They're no different to me
14 than some guy in a school yard with a bunch of candy enticing
15 children.

16 So, the business community, frankly, I think some
17 members of the business community are even more guilty in this
18 area than the people breaking the law by crossing the borders
19 illegally in the first place.

20 But I won't get into that. I'm done with that.

21 SENATOR PADILLO: Let's get back to the community
22 colleges.

23 We do have a motion by Mr. Cedillo to move --

24 SENATOR CEDILLO: That we embrace comprehensive
25 immigration reform -- or, I'm sorry.

26 [Laughter.]

27 SENATOR CEDILLO: Because I thought I heard
28 Senator Dutton say that he supported that, with full driving

1 responsibilities.

2 SENATOR PADILLA: Call the roll.

3 SECRETARY WEBB: Cedillo.

4 SENATOR CEDILLO: Aye.

5 SECRETARY WEBB: Cedillo Aye. Dutton.

6 SENATOR DUTTON: Aye.

7 SECRETARY WEBB: Dutton Aye. Padilla.

8 SENATOR PADILLA: Aye.

9 SECRETARY WEBB: Padilla Aye.

10 SENATOR PADILLA: And we'll leave that open for
11 Mr. Perata.

12 Thank you very much. Congratulations.

13 [Thereafter, CHAIRMAN PERATA

14 voted Aye, making the final

15 vote 4-0 for confirmation.]

16 SENATOR PADILLA: Next, we do have two appointees
17 to the UC Board of Regents.

18 If you would come forward, please. Mr. Varner,
19 Mr. De La Pena, have a seat.

20 Would either of you like to make some
21 introductory statements?

22 MR. VARNER: Yes, I would.

23 But first of all, Dr. De La Pena and I have some
24 family members with us that we would like to introduce. We have
25 a support group with us, so it's kind of nice.

26 SENATOR PADILLA: By all means.

27 MR. VARNER: First of all I have my wife Nancy,
28 and my son Kevin, and his wife Tracy, and my nephew Scott, Scott

1 Varner. They're here to watch the legislative of process.

2 SENATOR PADILLA: Welcome to the Capitol. We'll
3 try not to spill any blood.

4 MR. VARNER: Thank you, Members of the
5 Committee. I'm delighted to be here.

6 I'm really honored with this appointment. This
7 really gives me an opportunity to give something back to the
8 system.

9 I'm a pure product of the University of
10 California. I was raised in San Luis Obispo and went to law
11 school at the University of California at Santa Barbara. Then
12 after a short time in the Army, I went to the Hastings College
13 of the Law, another UC affiliate.

14 So, what were -- and I was in a position like a
15 lot of the younger people today, where I really could not have
16 afforded the tuition in some of the other institutions, so
17 having the opportunity to attend the University of California
18 was very, very meaningful to me. It gave me the opportunity to
19 be what I am to now, today.

20 So, I'm delighted to be able to be in the
21 position to -- to give something back to the University.

22 And as you all know, the University is the --
23 it's the finest institution of higher learning in the world.
24 And really, it's a major resource of the State of California,
25 and it's vital that we -- that we maintain that position.

26 So, I'm really committed to -- to work hard to do
27 that, and to make sure that we continue the mission of the
28 University in providing the opportunities for education, and

1 research, and services to the communities that they serve.

2 And it's occurred to me recently, we're new
3 appointees, and we're learning a lot. But it occurs to me that
4 sometimes everybody needs a dose of common sense. We see things
5 that could be resolved by dialogue, and I really watched
6 carefully with -- it seems like the major discussions with the
7 Legislature come at the time of budgeting. And I think that's
8 kind of a mistake that's important.

9 But I think we should be talking year around so
10 we don't learn of your issues in the newspapers, and you don't
11 read about things that the Regents are doing in the papers, and
12 then comment later. We ought to have a regular ongoing dialogue
13 to solve problems, and have an early warning system to work
14 together to maintain this vital asset to the -- to the state.

15 So, I'm really honored. I'm a recent Regent
16 appointee to the Post-secondary Education Commission. And I see
17 an opportunity there to do some real collaboration, which I
18 think is really necessary among the -- the University of
19 California, the California State University, and the community
20 colleges.

21 So, I'm one of these people that believe that a
22 few people can make a difference, and I intend to do that.

23 So, thank you.

24 SENATOR PADILLA: Thank you.

25 DR. De La PENA: Thank you, Senator Padilla.

26 My name is William De La Pena.

27 First of all, I'd like to also recognize my wife
28 who's back here, my wife Robin, for 23 years, thank her for

1 coming. She's been always in unconditional support.

2 I'd like, if I can, to give you a little bit of
3 background on -- on myself and for your consideration for this
4 appointment for the Board of Regents.

5 I was born in Whittier, California. And my dad
6 was born in Mexico. He was a physician. And at an early age,
7 he was able to get a scholarship in the University of Minnesota
8 for orthopedic surgery, and married my mother, who was a nurse.
9 My dad became an American citizen and was probably one of the
10 first Hispanic American subspecialists in the country.

11 And at age three, we moved to Mexico City. I
12 lived in Mexico City until I was about 18, where I went to the
13 University of Guadalajara for my medical school. And I
14 graduated top of my medical school class of 580 students.

15 And something happened then. The University of
16 California of Irvine opened up some positions, a pilot project,
17 which was the Fifth Pathway. And I was fortunate to get into
18 the University of Irvine.

19 I learned two things in that university -- I did
20 my opthalmology there and my internship -- and one of them was
21 service to the community, and the second, excellence in
22 education.

23 I came back to -- I went to the University of
24 London for year on a scholarship, and also to Louisiana State
25 University for a year, and came back to practice to the Los
26 Angeles area. Put my office in the east side of Los Angeles.
27 And one, the service to the community, we are probably the
28 largest, or one of the largest, Medi-Cal providers in the

1 state. So, we work very much with under-served communities.

2 And the second thing with education, I've been
3 active in educating since the early '80s throughout all Latin
4 America. I've trained over 2,000 ophthalmologists.

5 I've been honored with being the Chairman of the
6 Latin American Surgery, Ophthalmology Surgical Society, and the
7 World Federation Of Ophthalmic Surgeons.

8 I was also honored by the President to be
9 appointed and confirmed by the United States Senate to the
10 Uniformed Services University, which is the finest medical
11 school for the military in the world. And I've served on that
12 for six years. It's been a true honor.

13 I serve also as a Board of Consultant for the
14 University of Guadalajara, where they gave me a degree of Doctor
15 Honoris Causa.

16 I think that's my medical experience. Other
17 experiences that may help on the board is, I know a bit about
18 sports. I was the President of the United States Soccer
19 Federation during the World Cup for the Profession Division, and
20 owned the L.A. Franchise for -- for soccer.

21 And I also have had a television network, so I
22 understand the importance of communications, and all the
23 technologies so we can deliver a very good message.

24 I want to conclude this in saying that it is a
25 true honor to be here, a true honor to be considered for such a
26 position.

27 And I would like to just look at the Senators and
28 tell you that I think that I know you have a million things on

1 your plate, but if there's -- a million one right now -- but if
2 there is one institution that really can change the quality of
3 mankind in this state, it's the University of California.

4 And if there's -- if I'm confirmed, I will work
5 with you diligently to keep the University at the forefront.

6 Thank you.

7 SENATOR PADILLA: Thank you.

8 Actually, to start on the point you just left off
9 on, Mr. De La Pena, I don't think you'll find a whole lot of
10 disagreement with that statement about the potential for the UC
11 system to really be a charge agent for the State of California
12 and for the future.

13 One of the caveats, however, is that the UC
14 systems truly serve all Californians. And one of the issues
15 that we have grappled with, and have seen the UC system grapple
16 with in recent years is the diversity in its student body, in
17 addition to faculty and other staff, but we can get into that
18 later.

19 But when it comes to its student body itself,
20 when it comes to an admissions policy, when it comes to true
21 access, when it comes to admissions and financial assistance and
22 otherwise, we began this conversation yesterday in my office.

23 I'd love to hear from both of you again publicly
24 about what you're aware of that the UC system is doing, not just
25 at UCLA and UC Berkeley, but system-wide, to ensure that all UC
26 campuses reflect California?

27 DR. De La PENA: Well, I think the diversity is
28 certainly one of the main topics at the Board of Regents, and

1 certainly a main topic of discussion among what we can do with
2 the current laws.

3 And first of all, we must abide by the current
4 laws.

5 There are two issues that we're focusing on. And
6 one of them, as you mentioned, Senator, is the -- the new
7 systems that are being applied for applications, for example, in
8 Berkeley or in UCLA, where we're not only taking grades, or the
9 SATs and the grades of school in order to just pick a percentage
10 of people out.

11 What we need to do is apply other criteria, such
12 as hardship, leadership, and that is what some of the
13 universities are doing. And we're get a better, much better,
14 diversity into those universities.

15 So, I think one of them, we need to look at this
16 application process. And it may be different for different
17 universities because the quantity of applications, and the type
18 of applicants, and the type of schools that they have may be
19 different, but the concept of amplifying a bit the different
20 criteria to accept new applicants that are diverse is there, and
21 the desire is there for the Board of Regents.

22 The second thing that we must do, and I think
23 that, too, here we have -- we both feel the same, is to support
24 these outreach programs that we have that are measured every
25 year, and they're very successful. And these student
26 preparation tests -- I mean student preparation programs are --
27 like MESA and others, are very important. And it just shows
28 that, for example, twice as many people that are involved in

1 these programs go to a two or a four-year university.

2 Unfortunately, I think in the budget this year,
3 they have taken away the \$19.3 million. And I would encourage
4 the Legislature, and the University certainly supports that
5 amount of money going into these programs. And we should do
6 even more.

7 So, you have our -- my, and I know that Regent
8 Varner's absolute support for giving a much better distribution,
9 ethnic distribution, in the -- in the schools, so it looks more
10 like California.

11 MR. VARNER: I agree. And there's really no --
12 no one that I've talked to on the Regents that doesn't totally
13 support the idea that we have to do better with diversity, and
14 we're going to do that.

15 The problem is, we have to work around,
16 obviously, Proposition 209. And we also have to be careful that
17 we don't go -- take inappropriate steps with diversity so we --
18 we doom people for failure. We've got to qualify the -- the
19 people, just like Regent De La Pena commented, to be sure that
20 we work hard in the K-12 programs, to make sure that -- that
21 these students are properly qualified.

22 And I really -- when I read in the papers about
23 what we spend on the prisons, and I don't see anything about
24 what the cost of the process of getting an inmate into the
25 prisons, and then I see what -- what the University, what it
26 means in economic impact and -- to the state when we have
27 students graduate, I really, really think we can do better with
28 making an investment with these students, and achieve the

1 purposes that we all want to do.

2 So, we're dedicated, and we're going to do that.

3 SENATOR PADILLA: Let me ask just one other
4 subject area, then I'll open it up to my colleagues here.

5 A unique concern to the UC system, and it was
6 raised with your colleagues at the CSU Board last week, and that
7 is illegal downloading, whether it's of movies, or certainly
8 music. It's a significant impact to the entertainment industry
9 generally speaking, which is a significant economic engine not
10 just to Southern California but the entire state.

11 One of the areas where a lot of this activity
12 takes place is on college campuses. What has been done, what
13 can be done, to address this issue from your perspective? Is it
14 a topic of discussion amongst the Regents at this time?

15 MR. VARNER: In answer to your question, and we
16 first learned about that in the discussion with you yesterday.
17 And since then, we have made the appropriate inquiries.

18 It was not something that -- that came to the
19 attention of the Regents in any formal way. I think there were
20 some passing references.

21 But in each campus of the University, from the
22 Office of the President, they have implemented programs to
23 provide the appropriate programs where students have access to
24 those kinds of things at moderate prices, so they're not tempted
25 to do them illegally.

26 And there are, we understand, measures being
27 taken so if there are things done illegally, that there would be
28 appropriate -- appropriate actions taken so the University and

1 the students don't have any legal -- legal problems.

2 So, there are steps being taken that we know
3 about.

4 SENATOR PADILLA: And I raise it not just out of
5 concern for the industry, itself, but for the UC system and for
6 the state, for that matter. If students are indeed using state
7 equipment -- computers, software, otherwise -- for this
8 activity, I'd certainly be concerned about potential state
9 liability.

10 MR. VARNER: And one of the things that's been
11 really helpful about all these discussions that we've had are,
12 these kinds of things, we really take them serious, and we have
13 passed on these comments immediately to the Office of the
14 President. And we're assured that this is going to be a
15 continuing follow-up steps. So, we'll make sure that's done.

16 SENATOR PADILLA: Senator Cedillo.

17 SENATOR CEDILLO: You know, it's kind of unfair
18 after you put my bias on. I was part of one of the outreach
19 programs, the Upward Bound Program. I was mentored by Winston
20 Doby when I was a 15-year-old. I got on a bus, went to UCLA,
21 and it changed my life. I was admitted to UCLA and graduated
22 later on. So, I'm a little biased, a little pro-UC bent here.

23 I met with the President yesterday of your Board.
24 We talked about the problems with perception of compensation.

25 I was pleased to hear him talk about the
26 appreciation that we need to be thoughtful about the public
27 perception.

28 Tremendous challenges for us to get leadership at

1 the University. We have to compete with the finest universities
2 in the world.

3 But at the same time, the public, it's focused on
4 our pay for faculty, and our pay for support staff, and we have
5 to be really thoughtful about that, that they understand that
6 what we pay our leadership, our chancellors, our leaders at the
7 UC, that it's understood that that's what's necessary, and that
8 we're not trying to compete with the corporate world. But we
9 are, in part, competing with the corporate world for strong
10 leaders, and we need to be sensitive to the perceptions.

11 Any comments on that?

12 DR. De La PENA: Well, this obviously is a
13 delicate subject.

14 But at the forefront is the quality of the
15 University. We need to have the best leadership we can in the
16 University.

17 I think one of the -- when I've looked at the
18 statistics of the amount of money we pay our chancellors versus
19 comparable public institutions in the United States, the
20 statistics that we get were about four percent under the average
21 of just the regular public schools. That has nothing to do with
22 private schools, which would be much more -- much more
23 expensive.

24 And it's the same with the Office of the
25 President as with the chancellors.

26 I think that one of the things that the public
27 perception is -- can be affected is when you see a lot of
28 exceptions. And you say, "Well, the Regents have approved all

1 these exceptions."

2 And part of that is because the policies that we
3 have for hiring are old policies for hiring. And I know that
4 the Office of the President is working, and we've hired a group,
5 an outside group, to help us so that we can have contracts where
6 we don't have to get that many exceptions. And I think that
7 that'll help a lot the public perception.

8 But when you think that a chancellor that is a
9 fine chancellor can bring in maybe millions of dollars in
10 donations just because he's -- because of the person who he is,
11 or have a great group of scientists come with him, it's well
12 worth it for our University.

13 But I don't think that we're -- we're out of line
14 in what we're paying our -- our executives.

15 MR. VARNER: I serve on the Compensation
16 Committee. And one of the things that really has worked well in
17 the last year has -- even after we have been appointed, is
18 transparency. We now have total transparency, even to the point
19 of -- I think some of the recent articles in the paper came as
20 a result of that.

21 And obviously, transparency doesn't -- it has to
22 be administered in a way that doesn't violate an employee's
23 right to privacy. So, when you're reviewing promotions, or that
24 kind of thing, some of those would be done in closed session.

25 But all of the -- all the final actions of the
26 Compensation of the Committee are taken in open session with --
27 with total public access.

28 And the recent article in the Chronicle noted

1 some exceptions, and I happened to be in that meeting.

2 One of the reasons for that was, as Bill just
3 said, is the -- the policies are old and antiquated, and they
4 have pretty rigid -- rigid limitations on what can be done. So,
5 when you're trying to recruit someone that really can be a --
6 really an asset to the University, either on the faculty or
7 administration, the policies don't work.

8 And one of the things that gets overlooked at the
9 compensation package is the cost of housing in California.
10 We're really at a big disadvantage in recruiting from some of
11 the other states because of our cost of housing.

12 So, exceptions are made. I think the last ones
13 were very, very minor. They were all carefully explained, and
14 they were reviewed totally in public. And they were all made
15 for the benefit of the -- of the University.

16 But having said that, we are now in the process
17 of developing new policies that will have a lot more -- more
18 flexibility and really be more in tune with the modern -- the
19 modern compensation with other competing universities so we can
20 be more competitive without reading about exceptions.

21 SENATOR CEDILLO: Thank you.

22 Let me transition. You, as the CSU, as the
23 community colleges, are supporters of my proposal, SB 160, or
24 the California Dream Act, which will provide an opportunity for
25 undergraduates to compete or to apply for available scholarships
26 that we fund based upon the number of high school graduates.

27 So, I thank you for your support.

28 But I want to say in terms of this kind of

1 recruitment, and the challenges that Prop. 209 create, I want to
2 share with you that invariably, as I go up and down the campuses
3 to speak to these groups, and as I speak to honor student groups
4 throughout the UC system, invariably I find that a large part of
5 the honor students are the AB 540 students. That these
6 immigrant students have a certain will, have no sense of
7 entitlement, a willingness to do more with less.

8 And I'm just astonished at how talented they are.
9 Invariably, they are honor students, and yet they have the
10 greatest challenges.

11 I think we do ourselves a disservice when we
12 don't provide them with financial aid to facilitate their
13 movement, their academic growth. In many instances, they're
14 reticent to take out loans, although they may be available. And
15 so, we have students who could graduate in three-and-a-half
16 years, taking six or seven.

17 And I think that's the reason we have strong
18 support from the Chambers and the business communities, because
19 they recognize that these are future leaders.

20 There were experiences at UCLA, had an upturn in
21 their recruitment. There was fantastic leadership from the
22 African-American community. There seemed to be a great
23 partnership with the University and the leadership of
24 the African-American community.

25 Your comments on the experiences at UCLA in the
26 last year? And what we can learn from that, and what we can
27 emulate?

28 MR. VARNER: I think that's a good start. We

1 obviously have a lot to do, but it shows that with a little
2 effort -- and that really was something that occurred within a
3 short period of time after some focus, and after expressed
4 direction from the Regents and the -- and the Office of the
5 President.

6 And there is, as you know, there's a study going
7 on, commissioned by the Regents, for looking at the diversity
8 issue. And we hope to have that back at the next meeting. And
9 then we'll -- we'll start to really address how to -- how to
10 make that better.

11 But we have a lot of work to do, and your
12 comments are well taken. They show what can be done.

13 The educational experience should -- should
14 obviously -- and I think this is one of the ways that we can
15 comply with Prop. 209, because the world we live in is diverse,
16 and the educational process should be diverse.

17 As an athlete, I've commented many times, playing
18 on a football team, when I happened to be a running back, and I
19 wasn't going to do very well if I didn't get along with my
20 fellow team mates, irrespective of race or gender -- not gender
21 necessarily. I don't think we had a different gender -- but the
22 nationalities and the race.

23 So, we really, we learned a lot, and that's the
24 same thing. The process of education to be meaningful, I think,
25 needs to include diverse classrooms. And we need to get there.

26 And we're dedicated to work on that.

27 SENATOR CEDILLO: Thank you.

28 And then the last thing is that our Legislative

1 Analyst's Office talks about the growth of the college-age
2 population, but that it's going to slow sharply around '09. Del
3 Myers talks about, it's a recent book on immigrants and boomers.
4 And there's been several studies -- the Public Policy Institute
5 of California -- our need for an educated workforce.

6 And yet, we have boomers aging. We have some
7 challenges in terms of making sure we have enough students in
8 the University.

9 At the same time, I had a great lunch with
10 President Dynes, talking about the need for us to build more
11 universities. I mean, the population's growing in California.
12 We haven't built a new one. UC Merced is a unique experience.

13 But somehow, I think, we spend so much time and
14 dollars talking about the prison system, and we should direct
15 some of that, both dollars and leadership, to how we try to
16 build our way out of this through building our fine UC system.

17 So, some comments about what we can look forward
18 to in terms of the growth of the University, and where, and our
19 ongoing need for R&D, and where?

20 DR. De La PENA: Well, I've also asked about the
21 statistics of where will the population, the college population,
22 where it will be in the next years.

23 And from what I understand from the University
24 studies, it sort of plateaus. It doesn't decrease in the next
25 years. It sort of plateaus for the coming, I think, five years
26 or so.

27 It's really all dependent on the financial
28 resources that we can get from the state or from private

1 institutions, from research, from grants. And I think that when
2 you try to plan for either larger campuses, and we have some
3 campuses that fortunately have land. For example, Irvine has a
4 big advantage because it has actually land to grow. Riverside
5 are campuses, Merced, obviously.

6 It's really going to depend on the financial
7 ability for the University to build some new schools. And if
8 you don't have the money, and apparently the funds have been
9 decreasing from the state in the last 20 or 30 years as a
10 percentage of the revenue.

11 So, I think it's -- I think you'll draw the
12 talent. And I think there can be studies that'll show what the
13 state needs for certain types of professions so we don't have to
14 -- so we can have the people actually study here and stay here.
15 Because, for example, our medical schools are one of the fine
16 examples of how short we are of doctors in this -- in this
17 state. And it's going to get worse, 15 percent worse, in next
18 coming years.

19 So, expansion, for example, in certain fields
20 that we need -- medical doctors, nurses -- would be something
21 that we should invest in.

22 SENATOR CEDILLO: And let me go back to you,
23 because you have this hands-on experience.

24 But clearly in terms of medicine, and I'm
25 thinking of nursing, but also the need for multi-lingual or
26 bilingual, many languages, doctors and other medical
27 professionals to address the very changing demographic in
28 California.

1 DR. De La PENA: Well, there are a couple of
2 programs that -- that are being instituted in the University.
3 One of them is the Prime Program, which is a program in medical
4 education. And it's going to provide another 300 physicians
5 that are specifically trained to be not only bilingual, but
6 multi-cultural, which is -- which is important. And that will
7 have another 300 physicians a year coming from -- from that
8 training.

9 The other thing is to make certain agreements
10 across the border on border cities, so that we can have people
11 examined.

12 And the third thing is the great Telemedicine
13 Project. That is a wonderful technology that's coming for us,
14 the ability for the areas that are rural, that don't have
15 subspecialists because we haven't had an increase in doctors in
16 30 years, training in the state. And they're decreasing the
17 subspecialties in most residencies in the country.

18 So, this type of technology, where you can have a
19 subspecialist, and it also can provide income to the University
20 of California because of the specialists that we have in our
21 institutions and the tools. We'll be able to diagnosis. We'll
22 be able to treat patients without the necessity of a doctor,
23 maybe a technician, or a nurse practitioner, with these
24 technologies.

25 So, that is a project that I hope that everybody
26 supports, Telemedicine Project. It will put us -- and UC Davis
27 has one of the 10 best Telemedicine Projects in the country.

28 MR. VARNER: Senator, you identified a problem

1 that the -- that the projections show that in the next decade,
2 there's going to be a lowering amount of college graduates, and
3 an increasing need for college graduates to serve the workforce.

4 And so, several things we need to do. One of the
5 things that Chairman Blum is working on, which I think is really
6 intriguing, is the notion that the University has separately,
7 has a debt capacity that hasn't been used. And that may be a
8 source that we can talk about for some expansion of the
9 facilities and then increasing the availability of the
10 University for -- for new students.

11 The other thing we've got to do there, again
12 because of the cost of housing and other things, there's a large
13 number of our college graduates that leave the state. And we've
14 got to work on and continue the effort to try to find ways to
15 keep them here so they're available in the workforce.

16 So, those are all things that are challenges,
17 which we're going to need to work with all of you to find
18 solutions, because you have nothing else to do; right? Just to
19 help us. That's it.

20 [Laughter.]

21 SENATOR PADILLA: Mr. Dutton.

22 SENATOR DUTTON: Thank you.

23 First of all, I think we're really fortunate to
24 have two individuals so well qualified. I want to thank you for
25 your willingness to serve.

26 Just a couple of questions. Workforce
27 development, and so forth, was mentioned.

28 What are your feelings about the UC role in

1 making sure that people graduate with some kind of technical
2 skills necessary for immediate placement into the workforce
3 within a UC? I mean as far as the degree programs and so
4 forth?

5 MR. VARNER: I don't have any quarrel. I mean, I
6 think that's something --

7 SENATOR DUTTON: You would agree that's a pretty
8 basic requirement; right?

9 MR. VARNER: You know, obviously there's a lot of
10 different -- different degrees. And depending on whether
11 someone's looking to be a professor, or a teacher, or going on
12 to medical school, but I think it's vital to make sure that
13 whether they're in the UC, or -- we're working with California
14 State University or the community colleges in collaboration,
15 that we're making sure that people, when they get out, are --
16 are employable. I think it's important.

17 SENATOR DUTTON: The reason why I was asking, we
18 actually went to the web sites for the UC, and CSU, and
19 community college. And here was some updated figures from the
20 fall of 2006. And these are actual enrollment figures:
21 transfers from community college enrollees to the UC was 12,404;
22 to the CSU WAS 36,225.

23 However, what was interesting is that holders
24 of -- that all ready have Bachelors or Bachelor of Science
25 degrees that are currently enrolled in California community
26 colleges totaled 143,012.

27 So, one would have to ask the question, if
28 they've all ready got a four-year degree, then what happened?

1 Why shouldn't they have been able to go out and join the
2 workforce? Why do they find it necessity to go back to the
3 community college system to actually get whatever training they
4 need in order to join the workforce?

5 MR. VARNER: Probably found they'd make more as a
6 plumber, or something.

7 I don't know the answer to that, Senator.

8 SENATOR DUTTON: And I didn't expect you to. I
9 just wanted to bring it to your attention.

10 These numbers actually came from the State Board
11 of Education, in case you're interested.

12 But I think one does have to kind of ponder,
13 because when we're starting to take a look at dollars,
14 taxpayers' dollars, and how to best use them, we're even raising
15 tuitions, and competitiveness and so forth, there does come a
16 point when you say: Are we oversaturated? Do we have too many
17 facilities? Is there too much duplication?

18 Just like I know that the CSU system seems to
19 constantly want to encroach onto the University's role, and I
20 don't see University system necessarily doing that too much when
21 it comes to the CSU's role, but I do have some concern that
22 maybe, and when I look at UC Merced for an example, that's been
23 there for a while, trying to get established without a lot of
24 success in the way of students count, I've got to start asking
25 myself, are we really taking our resources, our limited
26 financial resources, and actually putting them to the best use.

27 And so, that was the only reason I was bringing
28 those numbers to you. You might want to take a look at them

1 while you're in your role.

2 MR. VARNER: Those -- those comments are well
3 taken. And obviously we've talked -- we've all ready mentioned
4 the fact of the need to find more efficiencies and greater
5 collaboration among the UC system and the State University and
6 the community colleges. And we talk about the K-12 programs,
7 obviously there's some duplication of effort. So, we need to be
8 more efficient and do -- do things where we don't duplicate our
9 efforts, and that we're collaborating instead of competing.

10 Those are good points.

11 SENATOR DUTTON: I just wanted to bring those
12 numbers to your attention. You can check with the State Board
13 yourself and verify them.

14 And then just one thing as favor to me. I
15 remember my first year up here, there was a huge salary increase
16 given out in May. L.A. Times reported it. Next thing I know,
17 I've got students coming up here because there was all of a
18 sudden a tuition increase, and so forth. And the students were
19 all mad at me, okay? And I had nothing to do with the pay
20 increase that was given out.

21 Just do me a favor. Don't do it in May any more,
22 because it just creates an added burden on me. And I'll throw
23 them back at you.

24 [Laughter.]

25 SENATOR DUTTON: Anyway, thank you.

26 SENATOR PADILLA: Thank you. Anything for
27 Senator Dutton.

28 [Laughter.]

1 SENATOR PADILLA: Couple more questions.

2 First, on behalf of the Pro Tem who's rejoined
3 us, we touched earlier on the topic of execution compensation
4 packages. Let me ask the question sort of in two parts.

5 Because it was a huge issue last year, it
6 continues to be a huge issue this year for the CSU system more
7 so than the UC system because of certain changes in practice
8 that have been put in place.

9 The compensation package concerned had somewhat
10 to do with levels of pay, but much more so to do with severance
11 packages specifically, once certain executives were leaving the
12 UC system and continued to draw down significant compensation
13 while all ready having landed the next spot.

14 Have you tracked the new policies and procedures
15 as it pertains to executive compensation, and negotiating these
16 packages? And have you had a chance yet in your brief term to
17 vote on any specific arrangements?

18 DR. De La PENA: Well, I don't sit on the
19 Compensation Committee.

20 And I think that many of those negotiations were
21 maybe prior to when we got there, Senator.

22 What I do know is that we are working on a policy
23 so that we don't have this type of exceptions, and some things
24 are permitted, and everything is transparent and reviewed.

25 Bruce, I don't know if you want to add to
26 that?

27 MR. VARNER: I agree. Those were concerns. And
28 some of those severance packages had been negotiated prior to

1 our time, and some of them were commitments made that -- that
2 were part of the overall package.

3 So, what -- as we talked about earlier, what's
4 happening now is, there's a comprehensive study being made of
5 appropriate policies for all of those things, which -- which
6 will try to be -- mirror what's going on in the modern world and
7 the people who are working for -- for institutions of higher
8 learning, and to be sure that we're doing things so that in the
9 future, that not only will it be transparent, everyone will know
10 what's being done, but there won't be exceptions. Or, if there
11 are exceptions, they'll be some really unique reason for it, as
12 opposed to now, where the policies don't -- don't allow the
13 appropriate compensation packages to be competitive.

14 SENATOR PADILLA: I guess the bottom line
15 question here then is, we recognize the fact that current
16 executives have existing terms and conditions of their
17 employment, clearly.

18 But on a going forward basis, on a prospective
19 basis, how important is this to you? What are your thoughts as
20 we are redefining the policies?

21 MR. VARNER: I think it's really important. And
22 obviously, if there's a severance package, that -- that should
23 be taken in as part of the overall compensation package.

24 I, for one, am more concerned about doing things
25 for employees who are all ready currently employed as opposed to
26 severance. Unless that's part of a retirement program, or some
27 other thing that negotiated if someone defers their
28 compensation.

1 So, I hope we're not going to see a whole lot
2 more of that.

3 SENATOR PADILLA: And just to emphasize the
4 point, as you know with your private sector experience, many
5 times elements, if not the entire severance, is done up-front.
6 Not at the point of separation, but through severance clauses in
7 contracts.

8 MR. VARNER: It has to be part of the overall.
9 And hopefully, when we see the -- and there's going to be a lot
10 of discussion about that -- but when we see the -- the
11 recommended compensation policies, then we'll be able to address
12 those.

13 SENATOR PADILLA: And the last question for now
14 has to do in the area of research projects, more specifically
15 those that have private sector funding or sponsorship.

16 We have certainly read and heard a lot about the
17 UC Berkeley application and award by BP, and questions
18 surrounding the appropriateness, or what safeguards are in place
19 to ensure research integrity, given that private sector
20 sponsorship.

21 I'm looking at an article here from just a couple
22 weeks ago, May 14th, that talks about the tobacco industry
23 funding research projects a many of the nation's universities,
24 including several within the UC system.

25 Do you have any thoughts about the tobacco
26 industry specifically helping fund research at the UC system?
27 Doctor?

28 MR. VARNER: That's a health issue.

1 DR. De La PENA: Well, I try to throw you the
2 compensation question, and you threw this one.

3 This is a very difficult issue in which the Board
4 of Regents is going to have people on both sides of the aisle.

5 I think that the -- one of the primary issues
6 is, one, if one accepts that there are private companies that
7 have partnerships with universities. And in that aspect, I
8 think that I would support that fully because I think it's the
9 way of the future.

10 And the second issue is, I don't know if it
11 depends on what company gives the money. I think more important
12 than that is the agreement that the University, and the control
13 that the University has, regarding the choosing of the type of
14 research, and an independent peer review of the research that's
15 being done by faculty.

16 So, both sides of the aisle would say, well, are
17 we going to analyze everybody that wants to give money? And the
18 tobacco industry has a RICO Act against it. It's very volatile.

19 But I think that having the key issues that I
20 would ask on this issue, and for any company, because it's going
21 to be something that's to be reviewed with any company that
22 wants to come in, and probably each agreement that the
23 University goes into in research is going to be a bit
24 different.

25 So, I would just insist on it being completely
26 controlled by the University, and having rules for that. And
27 have it independently audited.

28 And that would be my position on that.

1 MR. VARNER: There actually are -- there are two
2 different issues.

3 The grant from the -- the proposed grant from the
4 tobacco industry was originally opposed by the Faculty Senate.
5 And they've recently reversed their position on that.

6 The Regents, it's been deferred until the next
7 meeting of the Regents because there's several Regents, as Bill
8 just alluded, have differing opinions.

9 Part of the problem with -- with an earlier grant
10 that might be in that article was that there was an allegation
11 by one of the UCLA professors that the results of the research
12 were improperly reported to support the notion that maybe
13 second-hand smoke didn't -- didn't really have any health --
14 adverse health impacts. And so, there was a lot to do about
15 that.

16 There's one school of thought that says that
17 there should be no -- essentially not a limitation on where the
18 funds come from for grants, provided that the research is done
19 by the -- by the appropriate faculty people and researchers in
20 the University without any -- any way of any outside influence
21 on the -- on the results.

22 So, we'll see about that. And that's coming up.
23 There'll be discussion that, and there will be a difference of
24 opinion.

25 The other part has to do with the Helios Project,
26 and other things that are with -- with BP, going on at Berkeley.

27 And what that amounts to is, I think probably
28 it's going to be vital going forward that the University enter

1 into -- into more partnerships with the private sector. And
2 that's going to involve private sector providing funds and being
3 involved in the research.

4 And that -- and I think that's going to be
5 something we're all going to support -- in fact, I know I
6 will -- provided again that the integrity of the University in
7 research is adequately protected, both in the -- in the
8 agreements that are entered into and in the contracts, and also
9 provided that what comes out of that in the form of any kind of
10 technology that's useful to society, that we have the right to
11 have the licenses to it or the patents. Then we can use it,
12 because I think those kinds of things can create not new -- only
13 new industry, but new jobs, and certainly more research for
14 our -- our research faculty. So those -- we'll look at those
15 carefully.

16 I don't know the answer on the tobacco grant yet.
17 That's going to be --

18 SENATOR PADILLA: The last follow-up on this
19 issue is, what's the status of putting the safeguards in place?
20 Do we have a framework for what those safeguards should look
21 like for these or any other privately funded research project?
22 Do we have sort of core principles how and when any UC campus
23 would accept private sources of funding for research?

24 DR. De La PENA: My understanding from the Office
25 of the President is that there are specific rules, and specific
26 documents, and policies that are followed. And I believe
27 there's an office for grants and for projects that review every
28 type of contract. And there's a policy.

1 As a physician, I've done research. And I will
2 be the only physician on the Board if confirmed.

3 I think that the -- there's also involvement of
4 the academic sector, or the faculty, in making sure that there's
5 independent analysis of everything.

6 But these contracts will definitely be presented
7 to the Board of Regents. And I can assure you, Senator, that we
8 will look at all these contracts that mean so much for us for
9 the future, because we can't, from a liability standpoint, or
10 from a perception standpoint, being the leading university in
11 the world, take on a position where we do something that's
12 inappropriate.

13 SENATOR PADILLA: I'll just end on this note, in
14 the spirit of Mr. Varner's earlier comments about improved
15 communication between the Regents and Legislators.

16 Let this be clearly one of the areas that we're
17 going to be continuing to monitor closely.

18 MR. VARNER: And I really appreciate that,
19 because as I said, in the last few days it's been very helpful
20 to me, the dialogue of learning the concerns that all of you and
21 others in the Assembly have.

22 You have contact with your constituents we might
23 not have. And if we can learn of those concerns, rather than
24 from the media, I think we can do a lot better.

25 I don't mean that critically. It's just that --
26 it's just what happens, and the same -- it's two ways. And you
27 shouldn't learn about things that we're doing and be surprised
28 if they're something that doesn't necessarily agree with what --

1 what you all have looked at.

2 I'm a business guy and a business lawyer, and do
3 a lot of financing. And to me, this is the simplest thing in
4 the world.

5 I look at you all as a financial partner, like
6 our banker. And I can't imagine working on a corporate deal
7 without talking to my banker and saying, "We're thinking about
8 doing this. What do you think?"

9 And we ought to be doing more of that, because
10 again, the -- this University, in addition to -- to what it does
11 in the things we've all ready talked about, it just is an
12 absolute economic impact and an economic opportunity for all of
13 us. And we ought to be looking at making a better investment
14 and working together.

15 I just think that's -- and the more we dialogue
16 about those things, we can -- and the more we do that, the more
17 things that we do, some of the tougher issues, like diversity,
18 and access, and financial aid, should start to fall into place.

19 SENATOR PADILLA: When it comes to issues, as
20 elected officials I think we know more than average bear when it
21 comes to issues of integrity, and conflict of interest, and
22 those sorts of things.

23 So, let me turn it back over to our President Pro
24 Tem.

25 CHAIRMAN PERATA: I apologize for being late.
26 I'd like to tell you I was listening on the box, but it would be
27 a lie.

28 [Laughter.]

1 CHAIRMAN PERATA: I have just two questions, and
2 if they're redundant, then don't answer them again.

3 One is, there's been for some period of time a
4 belief among many, myself included, that Regents could do with a
5 little bit more staff independence, staff support, from the
6 Office of the President.

7 We, in fact, have done some things with the
8 budget to effect that. And I was wondering if anything, in the
9 short time that you've been there, you've noticed? Do you have
10 any independent staff support?

11 DR. De La PENA: I think it's yes. Yes, that's
12 improved.

13 And I think that the -- the thought between the
14 Regents that I have talked with, and with Bruce, is that we
15 should have independent people within the -- serving the Regents
16 so that we're not dependent of the Office of the President, or
17 so that we don't get a view that may be a bit biased.

18 And I think that that'll be very, very healthy,
19 so we can be independent from the Office of the President.

20 MR. VARNER: The answer is yes.

21 And going forward as the Regents in the view of
22 what's happened in the -- in the last few years prior and to our
23 appointment, but what's happened with some of the things,
24 there's a lot more oversight from the Regents on the Office of
25 the President.

26 And I think when we hear that -- things that
27 Senators have talked about, and being assured that contracts and
28 things are being properly administered, that we have the right

1 to get information without it necessarily being filtered, or the
2 possibility of being filtered or edited.

3 So, we do have a separate staff now that they're
4 working on, and I think it's going to be very helpful to us.
5 So, thank you.

6 CHAIRMAN PERATA: Well, one of the things -- and
7 I am happy that there's been an active business component being
8 brought -- Dick Blum has done -- all you guys are in finance.

9 Did you give up the practice of medicine and
10 become a financier?

11 [Laughter.]

12 MR. VARNER: He's thinking about it.

13 [Laughter.]

14 DR. De La PENA: Thinking of the financier part
15 of it.

16 CHAIRMAN PERATA: Well, we've seen, or at least
17 I've seen, decisions that have been made in academia that really
18 are not nearly as competitive as they would be in the private
19 sector.

20 And, you know, for example, I don't know why we
21 necessarily, the University, would have to be contract of record
22 to build a building. You could just put it out, get it built,
23 because we have a lot of different kinds of constraints.

24 But it is important to recognize that we're never
25 going to have enough money, public money, to make that
26 University what it was, and is, and what we want it to be in the
27 future.

28 So, being innovative in breaking areas, I know

1 the BP thing was a little controversial, but for the life of me,
2 I can't understand why.

3 But I think the oversight should always be with
4 you. Whenever we show up, it's never a compliment. You're far
5 better off maintaining that yourself.

6 My other question really involves the flip side
7 of the concerns that people have had for higher salaries, which
8 by the way, we had some Trustees from the State University here
9 yesterday. And they commented that the average compensation for
10 chancellor was \$200,000, which I don't think is -- a bad
11 backfield coach probably makes that kind of money. To me, I was
12 shocked. I don't think it's much for someone who is that role
13 in our system.

14 So, I'm not one of those guys that figure that,
15 you know, I grew up a Catholic, and we made people feel like
16 they could go into religious orders to give us cheap service,
17 then they caught on.

18 So, I don't believe you go into public service
19 now and necessarily have to take a big whack in the head.

20 But I do think that your public relations sucked,
21 but you're fixing that. That's good.

22 I have one other question. This was a problem
23 that occurred -- I think it's been solved -- but we had some
24 concerns over the treatment of some low wage earners in my
25 district and a couple of the campuses. I represent UC
26 Berkeley.

27 Are you informed of the grievance? I mean, you
28 certainly know what's going on up here.

1 But on the grievance of low wage workers, you
2 know, the people that come to work everyday and make the
3 University hum, but no one ever knows who they are, are you
4 aware of contracts and things of that nature? What people are
5 making, and all that?

6 DR. De La PENA: Not much more. I've only been
7 on the Board for eight months.

8 And I've had the privilege of meeting with the --
9 with the union members at the office about four or five months
10 ago. I believe it was in January.

11 And I did not know of a lot of the problems that
12 were happening. The same with Bruce.

13 Most of these contracts are negotiated by the
14 University, by the Office of the President. So, at least from
15 what I've seen, we've never really gotten involved in the
16 negotiations, or not getting an update until there's a problem
17 or something, and I think that that may take several months.

18 And I would hope that there could be better
19 communications so that we know the difficulties that low wage
20 employees have.

21 When we heard about that, when Bruce and I heard
22 about that, we went directly to the Office of the President.
23 There were some very good comments made by them, and we passed
24 the concerns along. And from what we understand, there's been
25 resolution to -- there's been an agreement, I'm very happy about
26 that. I'm very happy about that.

27 MR. VARNER: The collective bargaining process,
28 obviously the Regents can't get directly involved. But it did

1 come to our attention about some of the wage and working
2 conditions. And I did meet with the union and their
3 representatives.

4 And there were -- there were several concerns,
5 not only the issue of compensation, but the notion of how they
6 were treated on the campuses. And we -- I've talked to Bill
7 about it, and we went right to the Chairman as well as the
8 President and said that of all things we need to do is, we need
9 to treat people with dignity. And there should be every person
10 working at the University, from the bottom to the top, should
11 want to work there, and look forward to coming to work.

12 And so, we have -- we've passed that along, and
13 we'll continue to enforce that, because in addition to working
14 hard to find -- to make sure that every employee has the right
15 kind of compensation packages, and certainly living wages, they
16 need to be treated properly. So, we're doing that.

17 We can't get involved in the collective
18 bargaining process, but we certainly can put the input back and
19 be sure that those things are accomplished.

20 CHAIRMAN PERATA: Great.

21 Do those things say, "Go Bears," the little pins
22 you're wearing?

23 MR. VARNER: These are --

24 DR. De La PENA: These are Regents pins.

25 MR. VARNER: These are Regents pins. But they
26 said if you don't confirm us, we have to give them back.

27 CHAIRMAN PERATA: Yes, you do, and that will be
28 the high point of your compensation, your pin.

[Laughter.]

CHAIRMAN PERATA: Unless anybody on the dais has further questions, anyone here that would like to speak on behalf of the nominees? Don't be shy.

MS. HARRISON: Hello, good afternoon. My name is Lakesha Harrison. I'm the President of AFSCME Local 3299, and we represent 20,000 University of California's lowest wage workers.

AFSCME and other workers have met with the two Regents, nominees, and have developed report cards -- which you guys should have gotten. And if you don't, we have them here -- on their nominations.

But first, I would like to take just one minute to tell you why AFSCME is participating in this process.

The current Board of Regents does not meet the California Constitution's requirements to reflect economic, cultural, and social diversity of the state, which some of you guys have talked about today. Many Regents have never struggled to feed their families on low wages nor scraped to afford a college tuition for their children.

We need more Regents who understand the concerns of ordinary Californians. UC has lost touch with our California communities, operating within a climate of elitism and secrecy.

Students, and workers, and taxpayers must hold UC executives and Regents accountable so that they never, ever violate the public trust. One example of that violation is the executive pay stuff thank you guys were talking about earlier.

And some of us, some of the low wage workers,

1 it's kind of appalling to us see that there are exceptions made
2 for highly paid executives who are four percent below market.
3 And then we do have like the custodians, who are 25 percent
4 below market, that have to be arrested in the street, and locked
5 up buildings, and do all these type of actions to try to get
6 something to live off on.

7 So, one of the nominations is Regent De La Pena.
8 I had an opportunity to meet with him -- thank you for meeting
9 with me -- and another group of UCLA workers in his clinic
10 earlier this year. We appreciate that Regent De La Pena
11 provides eye care to mostly Latino patients in varying income
12 levels.

13 We spoke to him about getting UC back on track by
14 fixing broken labor relations at UC, supporting fair wages and
15 affordable benefits to improve recruitment and retention of
16 staff, and patient and student services, improving UC
17 transparency and accountability, and promoting student diversity
18 and affordability.

19 We thought that Regent De La Pena listened
20 carefully to our issues and ideas, but he offered few clues to
21 his own positions in these areas, which we heard more today.
22 Because of his willingness to meet with us and listen to us, we
23 are remaining neutral on this nomination.

24 We hope that if he is confirmed, he will -- we
25 will have many more opportunities to discuss the issues
26 affecting working people.

27 And we have one more comment.

28 CHAIRMAN PERATA: Thank you.

1 MS. RAIDER: So, I am going to read the comments
2 of Toni Hoyle. She's a UC Riverside custodian who flew here
3 today to speak, because she's one of the people who makes the
4 University hum, and then she had to catch a flight back. So,
5 I'm just going to speak on her behalf.

6 CHAIRMAN PERATA: May we have your name,
7 please?

8 MS. RAIDER: I'm Faith Raider. I work with
9 AFSCME 3299.

10 CHAIRMAN PERATA: Thank you.

11 MS. RAIDER: So, Toni and other UC Riverside
12 union representatives and students met with Regent Varner
13 earlier this year. We spoke to him about getting UC back on
14 track by fixing the broken labor relations, supporting fair
15 wages and affordable benefits to improve recruitment and
16 retention of staff, which will also help patient and student
17 services, improving UC's transparency and accountability, and
18 promoting student diversity and affordability.

19 We thought that Regent Varner seemed genuinely
20 interested in understanding why labor relations are so broken at
21 UC, and what can be done to fix them. And unlike many of the UC
22 Regents, Regent Varner seemed to have personal experience with
23 and empathy for the challenges facing low income families. I
24 should say current Regents.

25 Regent Varner said he was not opposed to creating
26 employee representation on the Board of Trustees for the UC
27 pension plan, so that it has the same type of joint governance
28 as Cal PERS and Cal STRS. And he said he was proud that UC

1 Riverside student body is the most reflective of the diversity
2 of California.

3 For all of these reasons, we hope to work closely
4 with Regent Varner if he is nominated. And a coalition of UC
5 unions, that includes AFSCME, the California Nurses Association,
6 UDCWA, and others are supporting his nomination.

7 CHAIRMAN PERATA: Thank you.

8 We'll tell her you did well.

9 Mr. Pelote.

10 MR. PELOTE: How you doing, Senator.

11 CHAIRMAN PERATA: Fine, thank you.

12 MR. PELOTE: And Members of the Committee, Willie
13 Pelote, representing the American Federation of State, County
14 and Municipal Employees.

15 I apologize, because there's so many things going
16 on, if I missed any of the comment in this area.

17 Senator, first let me say to you and the speaker,
18 we want to thank you for staying with the low wage workers to
19 really work through what it took, a year-and-a-half, to get.
20 And now, having something that really will make somewhat of a
21 difference in their lives, because of the pay raise that they
22 got. It's not at the extent that -- of Bruce Darling's pay
23 raise, but it does indeed represent the conclusion of a long
24 fight to address, to a certain extent -- a low bubble in the
25 ground -- of giving people more dignity for the kind of work
26 that they do, and the kind of pay that they should get from a
27 University that seemed to be, in the executive compensation,
28 willing to do a lot more for those at the top.

1 Having said that, I really wanted the two
2 Regents, and I don't know if they answered this question, and
3 please tell me if so, are they making a commitment today that
4 the workers who work in the University system, where wages are
5 taken out of their paychecks and going to their retirement, that
6 it is time for Regents to, together, move the joint governance
7 of the pension plan?

8 That is something that I need to know, that if
9 the two Regents here, who's asking for people in the State of
10 California to confirm them to a position, that they are willing
11 to do what it takes to educate others to do the joint
12 governance?

13 It's the only plan in the State of California
14 that I know of where my members' money is in an investment where
15 we don't have a voice on the board to say how those investments
16 should be made.

17 CHAIRMAN PERATA: I don't think that question was
18 asked before.

19 Would you like to respond?

20 MR. VARNER: I know that's being looked at, and
21 it's being studied. There are some legal issues, and I know --
22 I know we have talked about it, and I've talked to Regent De La
23 Pena.

24 We support the -- the employee involvement. And
25 we've passed that along.

26 And I don't know, there's a legal issue involved
27 in where -- how that's done, and who has the authority to do
28 that. But I know it's going to be discussed, and it's under

1 discussion.

2 I know we support your -- obviously, the
3 employees have a right to be appropriately -- have an
4 appropriate voice at that level, and we'll make sure that that
5 happens.

6 MR. PELOTE: Senator, what I'm hearing, and
7 gentlemen, to me, I try to remember things, is that the only
8 loophole that we know of is that, one, if the Regents are
9 empowered to do this themselves, or we need to go through voter
10 approval.

11 But if we find that it is the Regents can indeed
12 do this, we are asking for your support.

13 And what I'm hearing from you is that you will
14 give that support.

15 Because it's the largest public employee
16 retirement plan in the country, we get to elect people to that
17 board, and it's PERS. Even if you go to La Sierra, or any
18 county, we get to elect people because it's their monies in
19 those funds as well in that plan, and they should have a voice
20 on how investments is made.

21 And in light of what we have read recently about
22 what is happening with our investment, and then in light of the
23 requests of many in the Legislature to back-fill with public tax
24 dollars, we believe that this is the time, and the only time,
25 not next year, that we should have an election that represent
26 the employees at the number of those who sit on the Board from
27 the Regents to make decisions on our investment for our
28 retirement.

1 And if I'm hearing you correctly, you are
2 there.

3 CHAIRMAN PERATA: I heard the same thing.

4 MR. VARNER: Yes.

5 MR. PELOTE: And I want to make sure it's not the
6 same thing we heard from President Dynes, because --

7 CHAIRMAN PERATA: He got religion, yes.

8 MR. VARNER: There's obviously -- that's being
9 discussed now. And that's going to -- we stated our position.

10 And I don't know the answer. You have to
11 understand, we're learning a lot of these things, along with you
12 all, and there are different statistics and different things are
13 being presented, and we're listening to a lot of things. And
14 there's some legal issues about how you accomplish all these
15 things.

16 But I can't see any reason why the employees
17 shouldn't be represented with a voice on how that fund's
18 implemented.

19 MR. PELOTE: Thank you, sir.

20 And Senator, with that I want to concur with the
21 recommendation of my Local 3299.

22 CHAIRMAN PERATA: Strong neutrality?

23 MR. PELOTE: Neutral on one and support on the
24 other, with the hope we become friends, and we can then support
25 each other throughout the process as we move forward.

26 MR. VARNER: And I would just like to comment.

27 When you get appointed to this position, there's
28 an overwhelming amount of things that start to happen. It's an

1 institution with -- I think this year there's going to be
2 216,000 employees, and there's, I think, 170,000 -- I'm sorry,
3 students, and 170,000 employees. And it's a large process. The
4 budget's 19 billion.

5 And Bill and I have become friends, and I have
6 shared with him my views. And I can say that he's no different
7 than me.

8 None of us -- the only thing we can get out this,
9 as far as for us as a personal involvement, is making this
10 University not only a better institution, but that also means a
11 better place for the employees.

12 So, there's no difference, and we might have
13 debates on how we achieve those things, and I hope we'll have an
14 open dialogue because there's ways to accomplish things.

15 And what we have said, and Bill, and I'm sorry
16 you're not supporting him, because he's been with me all the way
17 on the same things, because you really should be supportive,
18 because we've talked about the notion that the collective
19 bargaining process, we're not involved. And it should not be
20 adversarial. It should be -- we really ought to be working
21 together to solve these issues. There's no reason.

22 There may be some legal obstacles or other
23 reasons that we're not aware of for how you get there, but these
24 are things that we need to work on and find solutions.

25 And Bill's been with me all the way in these
26 things.

27 CHAIRMAN PERATA: The people up here that have a
28 vote, Bill's in pretty good stead.

1 MR. VARNER: I just wanted to make sure that
2 there wasn't some --

3 CHAIRMAN PERATA: No, no. We don't do things
4 like that.

5 I notice on your report card, Mr. Varner, that
6 politics was the only negative, that you contributed to Governor
7 Schwarzenegger's Special Election Campaign.

8 We will give you an opportunity to make up for
9 that.

10 [Laughter.]

11 MR. VARNER: Okay. I didn't -- I don't remember
12 -- I think someone must have twisted my arm, or maybe offered me
13 a cigar.

14 [Laughter.]

15 CHAIRMAN PERATA: Did they ask if you had family
16 here? Great.

17 Anything further from the dais?

18 Oh, opposition? I didn't think so. We have no
19 opposition, and we have a motion to approve both of these
20 gentlemen.

21 Please call the roll.

22 SECRETARY WEBB: Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Dutton.

25 SENATOR DUTTON: Aye.

26 SECRETARY WEBB: Dutton Aye. Padilla.

27 SENATOR PADILLA: Aye.

28 SECRETARY WEBB: Padilla Aye. Perata.

1 CHAIRMAN PERATA: Aye.

2 SECRETARY WEBB: Perata Aye. Four to Zero.

3 CHAIRMAN PERATA: Four to zero, congratulations
4 to both of you, and thank you for what you're doing.

5 MR. VARNER: Thank you all very much.

6 [Thereupon this portion of the
7 Senate Rules Committee hearing
8 was terminated at approximately
9 5:51 P.M.]

10 --ooOoo--
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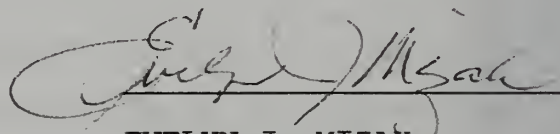
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of June, 2007.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX



Ms. Katherine L. Albiani

April 30, 2007

Senate Rules Committee

The Honorable Don Perata, Chair
Senate Rules Committee
California State Capitol, Room 420
Sacramento, CA 95814-4900

MAY 01 2007

Appointments

Dear Chairman Perata:

Thank you for your very kind letter of invitation to appear before your committee on Wednesday, May 23, 2007 to participate in the hearing for my possible confirmation as a member of the Board of Governors of California Community Colleges. I am certainly flattered to again have an opportunity to serve the citizens of California on this very important body.

What follows are my answers to your questions posed in your letter of April 11, 2007.

Statement of Goals

1. Please describe specific actions and system accomplishments towards achieving the goals of access, quality, and responsiveness. What do you hope to accomplish in your second term? Please be specific. How will you measure your success?

Since being appointed to the Board of Governors, I believe California's community colleges have made significant progress in the areas of access, quality and responsiveness. With the support of the Legislature and the Governor, we solved the decades old problem of inequitable funding throughout the system and implemented an equalization model that more fairly distributes funding to our colleges. We have also kept enrollment fees stable and as a result have seen tens of thousands more Californians enrolled in our colleges. In the area of quality, we established the most rigorous accountability system of any public higher education system in the state, which we believe over time will show that our colleges are making significant gains in the areas of transfer, career education preparation, degrees and certificates awarded, and basic skills success. Finally, we also adopted for the first time in the system's history, a strategic plan that provides a roadmap for further achievement in these areas.

In my second term I want to work to increase articulation between K-12 and community colleges--particularly in the area of career technical education--and to strengthen and

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clarify transfer requirements between community colleges and the two public university systems. Accomplishing these goals should lead to increased student success as measured by the number of degrees and certificates awarded and the number of students who either transfer to the UC and CSU systems or who are prepared to do so. This is an important point, as transfer not only depends on community colleges preparing students, it also requires that receiving institutions admit those students. We should maintain enrollment fees at a rate that does not bar access to our colleges, and to enhance the assessment of our students to ensure that they are more appropriately placed in college classes. If these could be accomplished, we will have gone a long way to implement much of our system's strategic plan.

2. *What are the major challenges facing community colleges and how would you prioritize them?*

It is difficult to prioritize the two top priorities of student success and access that are facing California's community colleges. We must both accommodate a growing number of citizens in our state while doing a better job of helping them succeed. Other challenges facing our system include enhancing linkages with employers who receive our graduates and ensuring that California has the workforce for today as well as for tomorrow.

3. *How will the board monitor and report on the progress made in meeting the strategic goals outlined in the system's strategic plan? Will the board have the authority to intervene if sufficient progress is not made?*

The system strategic plan includes a system for monitoring progress and the recent first accountability report released in response to legislative requirements will also allow us to monitor progress and use past years to form trend lines. In many cases the Board does not have direct authority, but through Title V, we can lead with example by showcasing best practices and encouraging colleges to adopt those programs. We can also work with the legislature and administration to target funding for programs that work.

4. *Sometimes systemwide state policy may conflict with goals established by local community colleges. For example, the state expects colleges to make improvements in areas such as transfer rates, while local campuses place a higher priority on increasing the number of English language development classes. What should be done to balance the need of addressing long-term strategic systemwide goals with locally driven priorities?*

It is often evident that although size is a tremendous strength of California community colleges, that very size and complexity can create challenges when trying to get all colleges headed in the same direction. The bilateral form of community college governance with both local and state boards should be respected. If the state sets a direction and colleges are not in compliance, the Board of Governors should carefully review these exceptions. There will be times when a different direction may be justified

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by local conditions, but if that is not the case the Board must be willing to hold institutions accountable for helping to achieve state goals.

5. *What is the board doing to ensure that more community college students are completing basic skills classes? What is the board doing to ensure that more students are moving into degree-applicable coursework if this is the student's goal?*

Perhaps the greatest example to the Board setting direction in this area can be found in the system strategic plan. Under the student success and readiness goal area are many examples of activities the Board will undertake to improve student performance in these areas and to ensure future movement in to degree-applicable courses. Recently the Board met in retreat to discuss basic skills and the numerous reports concerning student readiness. As a result of that meeting, we have asked staff to return with recommendations regarding a more unified approach to assessment by November.

6. *What can the board do to build the colleges' capacity to provide basic skills courses with existing resources? What should it do to evaluate the effectiveness of those offerings and programs?*

The Board is continuing to support Budget Change Proposals for funding in this area. Building college capacity in basic skills also involves the Board encouraging colleges to use their own discretionary dollars to improve student success in basic skills. The new accountability report will allow us to monitor progress in each area and to determine what is working that can be replicated across the state.

7. *What strategic direction is the board providing the chancellor's office as it develops the criteria for dispersing funds specifically set aside for basic skills education? Will the board measure whether districts are using these funds to target the least prepared students?*

The majority of the strategic direction provided the staff in this area can be found in the system strategic plan where the Board calls for improvements in student success in basic skills. Although the Board will monitor progress in basic skills it is difficult to say how effectively we can watch a given group of students. We can and should, however, know the characteristics of students that succeed and fail in basic skills courses to determine if there are characteristics that are different in the groups and would suggest different interventions.

8. *What is the board doing to encourage colleges to work with K-12 schools to align educational standards, assessments, and coursework that will better prepare students for successfully completing a community college education?*

By setting a strategic direction in this area the Board has notified the colleges of its importance. We have also encouraged work on assessment, curriculum alignment, and program evaluation that we hope will lead to increased funding for cooperative ventures

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between K-12 and community colleges. We continue to support the CSU early assessment programs and have recently funded work by the Statewide Academic Senate in curriculum alignment in higher education that should make early work in high schools even more attractive.

9. *Currently all districts determine their own academic standards. These can vary in academic rigor from campus to campus. Is the board encouraging colleges to begin using a uniform academic standard for assessing college readiness?*

Yes. At a recent meeting of the Board of Governors staff was directed to move in that direction. As Board Chair, I worked to get members of the Board to support the motion, and have since been working with the Chancellor's Office staff as well as various constituent groups to discuss the issue.

10. *Many community college students, especially those who receive a board of governors' fee waiver, frequently do not complete the FAFSA form, making them ineligible to receive state and federal financial aid. Should the board act to increase the number of students who complete the FAFSA form? If so, how? What can the board do to increase participation among part-time students?*

As a member of the Board I have consistently supported efforts to increase the number of students who apply for all types of financial aid. During my tenure on the Board we have seen increased outreach efforts at colleges across the state, and have frequently emphasized the importance of encouraging students to complete the FAFSA. These efforts have resulted in an increase in the number of students participating in the Pell Grant program. Communication and outreach to full and part-time students are the best methods of increasing the use of these programs and I am a strong advocate for that type of outreach.

11. *What improvements can be made to the board of governors' fee waiver program to better integrate this source of funds with other state and federal financial assistance?*

The greatest method of integrating this program with other forms of financial support for needy students is communication. Although we often assume that students understand the various forms of aid available and how those forms compliment one another, our experience has proven otherwise. In recent years the BOGG grant has seen a tremendous increase in usage, mainly due to increased communication with students on the part of our colleges, but even more outreach is necessary.

12. *Should there be a long-term community college student fee policy? If so, what should its key features be? Has the board considered recommending a gradual increase in community college fees with the new fee revenue used in part to improve financial aid services? Do you believe such a change has merit? Why or why not?*

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There should absolutely be a long-term community college fee policy, and the chief feature of such a policy should be modest and predictable increases set well in advance so that students and families can plan accordingly. There should be further conversation about the higher fee/higher aid concept. It may have merit, but there are so many factors affecting student fees and the cost of higher education, that a complete review is in order.

13. What priorities and criteria has the board established for dispersing funds appropriated for improving career technical education?

The initial distribution of these dollars was done through competitive grants. The priorities for the dollars were focused on building capacity and best practices that could be replicated throughout the state.

14. What is the chancellor's office doing to address the need for better coordination between K-12 and community college vocational programs? Have the community colleges collaborated with the K-12 community in distributing these funds and establishing the requirements for receiving the funds?

There has been impressive cooperation between K-12 and community colleges in the distribution of these dollars and the coordination between our two systems. There have been numerous cooperative meetings between teams for K-12 and community college staff, and these teams have also jointly scored the applications for competitive grants. Although there has been much good work, there is tremendous opportunity for an even greater level of cooperation between our systems to enhance the delivery of career technical education.

15. What is the chancellor's office doing to ensure that a broad cross-section of colleges compete for this funding and that the funding reaches as many colleges as possible?

Achieving a wide level of college participation in grant applications and funding is always a challenge in a system with colleges of dramatically varying program mixes. The Chancellor's Office has done a good job of communicating with all colleges about the opportunities, encouraging colleges to work together as groups, and fostering cooperative applications between several colleges and K-12 districts together.

16. What role has the board played in coordinating with other state agencies, eg. California Department of Corrections and Rehabilitation, CalWorks, and the Workforce Investment (Office?) to improve access to educational opportunities for traditionally underserved or difficult-to-serve segments of the state's population? What strategies should the board promote to address these issues?

The Board of Governors has been a strong proponent of public-public partnerships of the agencies referenced above. Additionally, our colleges across the state are providing training for many more state agencies. The system strategic plan encourages this type of

The Honorable Don Perata Chair, Senate Rules Committee

April 30, 2007

Page 6

cooperative problem solving, all our programming is designed to increase our impact on the underserved or difficult-to-serve population. The Board should continue to promote these cooperative solutions, and whenever possible be the chief training arm of the State of California.

Thank you again for the opportunity to respond to these very thoughtful questions. It is clear from the approach being taken by the Rules Committee that its members are deeply committed to the enhancement and improvement of our colleges.

I look forward to seeing you and the members of the committee on the 23rd. In the mean time if you have additional questions please do not hesitate to call me directly.

Sincerely,



Katherine L. Albiani, Chair

Board of Governors of California Community Colleges

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SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

April 11, 2007

John W. Koeberer

Dear Mr. Koeberer:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California Community Colleges Board of Governors on Wednesday, May 23, 2007. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We would like to receive an updated Form 700, Statement of Economic Interest, by May 2nd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by May 2nd.

Statement of Goals

1. *Please provide a brief statement outlining the goals you hope to accomplish while serving as a member of the California Community Colleges Board of Governors. How will you measure your success?*

Preparing for the Future

The California Community Colleges Board of Governors recently approved a long-term strategic plan that is intended to guide system priorities and investments. Among its objectives the plan seeks to improve student access and success, and enhance the value the colleges provide to students and the state. The plan establishes goals, a common set of strategies, implementation measures, and methods for assessing implementation.

2. *What are the major challenges facing community colleges and how would you prioritize them?*
3. *How will the board monitor and report on the progress made in meeting the strategic goals outlined in the system's strategic plan? Will the board have the authority to intervene if sufficient progress is not made?*
4. *Sometimes systemwide state policy may conflict with goals established by local community colleges. For example, the state expects colleges to make improvements in areas such as transfer rates, while local campuses place a higher priority on increasing the number of English language development classes. What should be done to balance the need of addressing long-term strategic systemwide goals with locally driven priorities?*

Developing Basic Skills of Community College Students

The development of strong basic skills is the foundation for student success at a community college. Currently it is estimated that at least 75 percent of all incoming community college students require remediation or basic skills development to complete college-level work in mathematics and English. This year the state budget appropriated \$30 million in new funding to address this growing need. In 2007-08, the Governor proposes to permanently redirect \$33 million for a new student success initiative. These funds were previously designated for districts exceeding their enrollment growth in basic skills courses. The \$33 million would be added to categorical funding for matriculation programs, including orientation, skills assessment, counseling, and tutoring. The community college chancellor's office is responsible for dispersing these funds .

Recognizing the importance of basic skills, the board of governors recently held a special session devoted to assessing student preparedness and student success. The board voted unanimously to direct the chancellor, in consultation with other stakeholders, to begin the process of evaluating the implementation of a systemwide, common assessment of all community college students, with the expectation that the board shall consider and adopt the systemwide assessment by November 2007.

5. *What is the board doing to ensure that more community college students are completing basic skills classes? What is the board doing to ensure that more students are moving into degree-applicable coursework if this is the student's goal?*
6. *What can the board do to build the colleges' capacity to provide basic skills courses with existing resources? What should it do to evaluate the effectiveness of these offerings and programs?*

7. *What strategic direction is the board providing the chancellor's office as it develops the criteria for dispersing funds specifically set aside for basic skills education? Will the board measure whether districts are using these funds to target the least prepared students?*

Early Assessment

One of the community colleges' strategic goals is to increase completion rates among community college students by promoting college readiness as early as possible. According to a recent report by the Institute for Higher Education Leadership and Policy, less than one-quarter of degree or transfer-seeking community college students actually earned a college degree or certificate or transferred to a four-year institution within six years.

One strategy being considered within the system is the development of an early assessment program for 11th grade students who plan to attend a community college. The program would be modeled after a CSU early-assessment program and provide an early indication of a student's readiness to take on the rigors of degree-applicable coursework. Two key components of this effort are (1) establishing a common academic standard that is aligned to K-12 academic standards, and (2) providing prospective community college students and their teachers with a clear, consistent message about the academic preparation needed to succeed at a community college.

8. *What is the board doing to encourage colleges to work with K-12 schools to align educational standards, assessments, and coursework that will better prepare students for successfully completing a community college education?*
9. *Currently all districts determine their own academic standards. These can vary in academic rigor from campus to campus. Is the board encouraging colleges to begin using a uniform academic standard for assessing college readiness?*

Student Fees and Affordability

The 2006-07 Budget Act reduces community college student fees from \$26 to \$20 per semester unit. This action was taken to roll back fee increases imposed on community college students in recent years due to state funding shortfalls. For 2007-08 the Governor proposes no changes to community college fee levels. Additionally, the board of governors administers an Enrollment Fee Waiver program that was created in 1984 as a locally run program for low-income students. Approximately 40 percent of full-time students receive a fee waiver, while about 20 percent of part-time students receive the waiver. A recent report by the National Center for Public Policy and Higher Education found that fees make up less than 5 percent of the costs for community college

students. The report also found that California's community college students are less likely to apply for and receive federal financial aid than their counterparts in other states. The report recommends that fees be gradually raised, with the additional money spent on academic improvements, financial aid counseling, and improving transfer rates.

- 10. Many community college students, especially those who receive a board of governors' fee waiver, frequently do not complete the FAFSA form, making them ineligible to receive state and federal financial aid. Should the board act to increase the number of students who complete the FAFSA form? If so, how? What can the board do to increase participation among part-time students?*
- 11. What improvements can be made to the board of governors' fee waiver program to better integrate this source of funds with other state and federal financial assistance?*
- 12. Should there be a long-term community college student fee policy? If so, what should its key features be? Has the board considered recommending a gradual increase in community college fees with the new fee revenue used in part to improve financial aid services? Do you believe such a change has merit? Why or why not?*

Career Technical Education

The Governor's Budget proposes \$52 million for grants to increase and strengthen the coordination of industry-driven career technical education between community colleges and K-12 schools. Legislation passed in 2005 established the career technical education improvement grant program to improve linkages and align career technical education pathways between high schools and community colleges. The chancellor's office and the California Department of Education administer the act, in which funds are allocated through a competitive grant process with community colleges invited to apply.

- 13. What priorities and criteria has the board established for dispersing funds appropriated for improving career technical education?*
- 14. What is the chancellor's office doing to address the need for better coordination between K-12 and community college vocational programs? Have the community colleges collaborated with the K-12 community in distributing these funds and establishing the requirements for receiving the funds?*
- 15. What is the chancellor's office doing to ensure that a broad cross-section of colleges compete for this funding and that the funding reaches as many colleges as possible?*

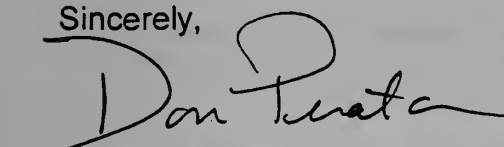
Coordination with Other State Agencies

16. What role has the board played in coordinating with other state agencies, eg. California Department of Corrections and Rehabilitation, CalWorks, and the Workforce Investment (Office?) to improve access to educational opportunities for traditionally underserved or difficult-to-serve segments of the state's population? What strategies should the board promote to address these issues?

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you.

Sincerely,



DON PERATA

DP:LG

The first part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, followed by a description of the methodology used in the study. The results of the study are presented in the next section, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The study was conducted in a laboratory setting, and the results were compared with those of previous studies. The findings of the study are consistent with those of previous studies, and they provide new insights into the phenomenon being studied. The implications of the study are discussed in detail, and the authors conclude that the study has made a significant contribution to the field.

The authors would like to thank the following people for their assistance in the study: [Name], [Name], and [Name]. The study was supported by a grant from the [Organization].

APR 26 2007

Appointments

1. All but a couple of personal goals are incorporated within the Strategic Plan that has been developed by the System's Office. The Plan has been adopted and is in the implementation phase. The five strategic goals are College Awareness and Access, Student Success and Readiness, Partnerships for Economic and Workforce Development, System Effectiveness and Resource Development.

Being a product of the Community College System and owing much of my life's success to what I achieved and learned during those two years I am greatly motivated to see as many as possible take advantage of the system. Knowledge about access and the seamless delivery of the recruitment and registration process are vitally important to make sure that as many as possible are served.

I am especially concerned that continuing major emphasis be given to Career Technical Education (CTE) to make sure California has the trained workforce it needs to keep up with the rest of the world and help stem the number of jobs which are now going off shore.

In terms of measuring success the BOG will be given regular updates on the Strategic Plan and has created an Implementation Oversight Committee (IOC) which will meet twice per year to review progress on the implementation of the plan. I will be following this closely and feel that I would have no problem intervening if progress is not acceptable.

I am Chairman of the Career Technical Education/Workforce Development Committee of the BOG and will work closely with Vice Chancellor Milan to make sure that CTE in our Community Colleges continues to make progress on all fronts.

2. I believe there are many major challenges for the Community Colleges....

a. Dealing with the Basic Skills shortfall and having the resources to meet this need so that all students who attend have an opportunity to learn to function adequately in the workplace and society. Over half of incoming students need basic skills instruction in math and English.

b. Making sure that the colleges have the CTE resources to certificate/graduate a knowledgeable and effective workforce member. CTE is finally receiving the attention it needs to get priority funding and attention....we must not drop this ball.

c. Increasing the coordination between California's five educational segments....K-12, Community Colleges, CSU, UC and the Private Colleges....so that students understand the best alternative for themselves to better their opportunities in their career choice....concurrent enrollment and alignment of courses are areas that need significant work.

d. The System Office itself needs the resources to be better staffed to meet its legal obligations as well its policy and support functions. It is underfunded and sometimes cannot provide but the barest of required services.

3. Mostly covered under #1 above. The BOG does and will have the power to intervene if progress slows. As previous Chair of the State Chamber of Commerce (California's largest business organization) I had no problem leading the Executive Committee in intervention when necessary and will do the same during my tenure with the BOG.

4. The System is comprised of 109 colleges governed through 72 districts each with a locally elected Board of Trustees. They have much autonomy outside the jurisdiction of the BOG. We

will be focusing on system wide goals important to all of the colleges and will communicate effectively how local colleges can help with the implementation of our Strategic Plan, however it will be nearly impossible to assess and redirect many of the local priorities.

5. The BOG is responsible for dispersing the \$33 million dollars that the Governor redirected for a new student success initiative. These funds were previously designated for districts exceeding their enrollment growth in basic skills courses. The BOG will oversee how these funds are added to categorical funding for matriculation programs, including orientation, skills assessment, counseling and tutoring. This should help assure that more students are moving into degree-applicable coursework if that is the student's goal.

6. The BOG has limited funding ability but it can assist the colleges in assessment of incoming students so that resources are more effectively focused on the needs of specific students. In furtherance of this goal the BOG has voted unanimously to direct the Chancellor to begin the process of EVALUATING the implementation of a statewide common assessment of all community college students. The BOG could officially consider and adopt this systemwide assessment by November 2007. The BOG is also supporting a systemwide Basic Skills Initiative.

7. This is mostly answered in #6 & 7 above. It would seem to me that the system wide assessment program will give the local colleges a much needed information base to wisely spend dispersed funds. With my limited knowledge at this early state of my tenure it would seem that with the System's limited staff it would prove difficult for the BOG to monitor/measure each individual college's success in targeting the least prepared students...that said it seems the BOG should explore this goal with the Chancellor's Office.

8. One of the goals of the newly adopted Strategic Plan for Community Colleges is to increase completion rates among community college students by promoting college readiness as early as possible. A strategy being considered to meet this objective is 11th grade early assessment within the K-12 system. We would encourage the K-12 system to do an early assessment that would be modeled after the existing CSU program. This early assessment would provide an early indication of a student's readiness to take on higher level studies leading to an associate degree.

9. Hopefully the colleges will utilize both the early assessment elaborated upon in #8 above and the contemplated systemwide assessment described in #7 to help set appropriate academic standards that will become more consistent throughout the State.

In addition it should be noted that there are two main components of the above early assessment plan....one would be to establish a common academic standard that is aligned to K-12 academic standards and the second would be to provide prospective community college students and their teachers with a clear, consistent message about what it takes to succeed in a community college.

10. A recent study by the National Center for Public Policy and Higher Education found that fees make up less than 5% of the costs for community college students. This report also determined that California Community College students are less likely to apply for (FAFSA form) federal financial aid than their counterparts in other states.

A somewhat logical conclusion is that K-12 and the Community Colleges are not doing a good enough job of letting students know about this funding...this is being addressed in our Strategic Plan as we improve coordination with the K-12 system. I do believe it is very much in our interest to make knowledge about this funding source more available to make sure that students who are economically challenged have this resource...but again remember fees are only 5% of the total cost. Perhaps it would be better to begin to investigate how we can assist in other areas like housing, travel, books, daycare, meals, etc.

11. Again...fees are only 5% of the costs of going to a community college we need to look at other areas of assistance as enumerated in #10 above.

12. I think it would be difficult to set a long term fee policy other than to keep fees as moderate as possible, however a longer term program to address assistance in the more major cost categories as enumerated in #10 above would be appropriate. If there were to be fee increases I believe those increases should be directed toward helping with travel, supplies/books, daycare, meals and housing.

This idea has merit simply by the fact that fees only amount to 5% of the costs of going to a community college. We need to consider structuring programs that get to the more heavy cost contributors.

13. This is my area of major emphasis and concern. California is falling further behind each year in meeting the needs of California employers. I am just starting to get my arms around how the BOG can be more effective in establishing criteria for the dispersal of the \$52 million in grants that the Governor's Budget has proposed. These grants will be competitively bid by the colleges. One of the main criteria used in awarding these grants would be how effective these funds would be used to meet those needs of increasing the "impacted" areas of instruction like nursing, welding, fire fighting, IT and automotive.

14. This area is being addressed in discussions with the K-12 system. Better coordination is needed where hardly any has existed in this -- until now --poorly disregarded area of instruction. The legislation passed in 2005 established the career technical education improvement grant program to improve linkages and align career technical education pathways between high schools and community colleges. This act is administered by the Chancellor's Office and the Department of Education. The goals of this act are addressed in our Strategic Plan.

15. The Chancellor's Office is working hard to make sure that all college are aware of this grant funding. In a personal tour of Shasta College just last week it became readily apparent to me that the local colleges are acutely aware of the existence of these grants and stand ready to compete aggressively. It does not seem to be a problem of knowledge of existence of the grants...it will be a problem of not having enough grant monies available to meet the ever increasing demand for monies in this crucial area of instruction.

16. At the next BOG meeting in May the BOG's agenda includes a work session addressing how we can participate more aggressively in training inmates of the California Correctional System.....so that released inmates are adequately prepared to successfully enter the workforce. We are also addressing the need to educate correctional officers.

I have also worked very recently with the Northern California Workforce Investment Boards in efforts to better improve the awareness of the BOG of the needs of our local employers and how they can be better met by our local colleges.

The first part of the paper discusses the importance of the study of the history of the English language. It is argued that the study of the history of the English language is not only a matter of historical interest, but also a matter of practical importance. The study of the history of the English language can help us to understand the development of the English language and to see how the English language has changed over time. This can be useful in many ways, such as in the study of literature, in the study of the history of the English language, and in the study of the English language in general.

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Responses to Senate Rule Committee Community College Board Confirmation
Rose Guilbault
Confirmation Hearing May 23, 2007

1. Statement of Goals

During my term I am particularly interested in providing leadership in the following areas:

- Support programs and funding that close the gap between the retention, graduation and transfer rates of students.
- Support programs that increase college access to underserved groups.
- Support programs that demonstrate effective improvement in basic skills
- Pursue development of effective partnerships with K-12 system to better prepare students for community college work
- Champion successful programs that align with state and local economic and workforce needs and seek increased collaboration with the industry to ensure technical skills education and educational skills meet the needs of our future economy.
- Support the implementation of the strategic plan.

Success can be measured by progress in these areas. The BOG strategic plan addresses all the areas mentioned, and regular reports will document that progress.

2. What are the major challenges facing community colleges and how would you prioritize them?

- **Basic Skills:** Over half of all incoming community college students need basic skills in math and English. The percentage is even higher for minority students. Hispanics continue to be the fastest growing minority in California, yet have the highest high school drop out rate.
- **Demand:** The demand for community college use is growing among large demographic groups, i.e. seniors and the increasing Asian and Hispanic population. This puts tremendous financial pressure on the system.
- **Alignment of State Educational Policies:** All educational systems have separate governing structures. Better alignment is needed to ensure student success.
- **Funding:** Necessary for growing student population and to cover non-credit courses needed for remedial classes to help unprepared students to succeed in college.

3. How will the board monitor and report on the progress made in meeting the strategic goals outlined in the system's strategic plan? Will the board have the authority to intervene if sufficient progress is not made?

The Board receives regular updates from the Chancellor and the system staff on the strategic plan progress. Additionally, an Implementation Oversight Committee (IOC) is comprised of a diverse representation within and outside the system including representatives from the Legislature, the Governor's Office and the private sector. Although the Board has some authority to intervene if sufficient progress is not being made, we rely on the collaboration with the 72 local districts to take strong action.

4. **Sometimes systemwide state policy may conflict with goals established by local community colleges. For example, the state expects colleges to make improvements in areas such as transfer rates, while local campuses place a higher priority on increasing the number of English language development classes. What should be done to balance the need of addressing long-term strategic systemwide goals with locally driven priorities?**

The two entities have different purviews. The Board focuses on system-wide goals while locally elected boards of trustees address local priorities. Practically speaking, the Board allows districts to determine their own priorities because it's not possible for the Board to assess progress for so many colleges. That's why all groups were at the table during the strategic planning process. Only by being inclusive can we hope to sort through any differences.

5. **What is the board doing to ensure that more community college students are completing basic skills classes? What is the board doing to ensure that more students are moving into degree-applicable coursework if this is the student's goal?**

In the strategic plan, five goals areas were identified with strategies attached to each one. A Goal Area Implementation Team (GAIT) and an Action Plan Group was formed for each strategy. They concluded that greatest priority areas at this time are: Basic Skills as the Foundation for Student Success and Assessment and Placement. Plans for addressing these strategies were presented to the Board at a July meeting. The plan is to review studies and best practices to determine best methods that will boost success rates of basic skills students.

The Action Plan Group is providing goals, parameters and timelines for the research and an Academic Senate subgroup will draft recommendations on research necessary for the literature and best practices review. The key findings and programs will be presented to colleges to select from, given available funding. We'll also offer staff development opportunities and arrange on-site workshops/training at the colleges through the two-year implementation period, (2006-2007).

6. **What can the board do to build the colleges' capacity to provide basic skills courses with existing resources? What should it do to evaluate the effectiveness of these offerings and programs?**

During this year, colleges have been asked to use the basic skills overcap funds to cover the review of literature and best practices. They are being encouraged to devote a significant portion of these funds to faculty /staff development efforts. This will ensure greater preparation for 7/08 and 8/09 implementation of programs selected following the review of the literature and best practices as detailed in the previous answer.

Following implementation, the students' will be evaluated on how successful they were in completing ESL/Basic Skills courses, degree credit courses , and their completion of certificates/degrees and transfer to 4-year institutions. The results will be reported to the Board.

- 7. What strategic direction is the board providing the chancellor's office as it develops the criteria for dispersing funds specifically set aside for basic skills education? Will the board measure whether districts are using these funds to target the least prepared students?**

A BCP is being prepared for the 2007-2008 budget year to address needs of implementation. Under review will be size of program and staffing needs and faculty/staff efforts. An evaluation of student's successful completion of ESL/Basic Skills courses and degree credit courses, as well as completion of certificates/degrees and transfer to four-year institutions. These results will be reported to the Board.

- 8. What is the board doing to encourage colleges to work with K-12 schools to align educational standards, assessments, and coursework that will better prepare students for successfully completing a community college education?**

We are collaborating with the CSU early assessment program to increase K-12 preparation levels and curriculum alignment. We're also identifying options to align high schools and college assessments to reinforce each other. Additionally, there is participation in state-level dialogs to increase the alignment of curriculum between the colleges and K-12, build on existing programs like Cal Pass and Tech Prep, to avoid duplication.

- 9. Currently all districts determine their own academic standards. These can vary in academic rigor from campus to campus. Is the board encouraging colleges to begin using a uniform academic standard for assessing college readiness?**

An Action Plan Group has been formed to address a number of initiatives under Strategy B3 which includes Community College Standards. This group will undertake an Action Plan for this area and offer recommendations to the Board. Through this type of thoughtful review we hope to offer uniform academic standards that can be adopted by all colleges.

10. Many community college students, especially those who receive a board of governor's fee waiver, frequently do not complete FAFSA form, making them ineligible to receive state and federal financial aid. Should the board act to increase the number of students who complete the FAFSA form? If so, how? What can the board do to increase participation among part-time students?

The Strategic Plan has an area of focus on expanding and improving existing programs to enhance student's awareness of available financial aid programs. In the last two years participation in the Pell Grant program has grown largely due to the State's \$38 million investment in community college financial aid administration and outreach. It also allowed the system to create the "icanaffordcollege.com statewide financial aid media campaign that works in unison with local outreach efforts.

While laudable, these efforts need to be increased. Students whose parents did not attend college or are recent immigrants, are unaware of financial aid options, they don't know how to read forms or understand the complicated financial aid application process. For these students and their families, help in completing applications in multi-languages would be of great help. We need to target low income and disadvantaged minority communities who have the greatest need. It's also important to start doing this type of outreach in high schools. In fact, it's not too early to start talking to students in junior high to socialize the idea of going to college. And do separate outreach to parents at schools, community centers and churches so that they know there is financial support to encourage their children to go to college.

The Board can continue to support and fund the systems efforts to improve awareness of financial aid programs.

11. What improvements can be made to the board of governor's fee waiver program to better integrate this source of funds with other state and federal financial assistance?

- Simplify and align program regulations and application requirements to encourage greater participation
- Decentralize financial aid awarding models so that students already qualifying in any of the various state and federal programs can be easily identified to receive a more comprehensive aid package.
- Support innovative ideas i.e. creating a book Grant program tied in to fee waiver application. Textbook prices have increased at nearly four times the rate of inflation since 1994. For the lowest income students, this could effectively close the door to college.

12. Should there be a long-term community college student fee policy? If so, what should its key features be? Has the board considered recommending a gradual increase in community college fees with new fee revenue used in

part to improve financial aid services? Do you believe such a change has merit? Why or why not?

The BOG adopted a "Statement of Principles and Policies for Community College Fees and Financial Aid" in 1987. Since then, I understand the policy has been revisited and reaffirmed a number of times. The policy states:

- Community college fees should be low, reflecting the an overall policy that the state bears the primary responsibility for the cost of community college education.
- Community college fees should be predictable, changed in modest fashion in relation to the cost of education and their burden should be equitably distributed among students.
- Financial aid should be sufficient to offset fees that may pose a barrier to the access of low-income students.
- Fee and financial aid policies should be consistent with fiscal and academic policies in supporting the dual objectives of access and excellence.

Historically, fee increases seem to happen during fiscal crisis and students have been put in the position of paying more but getting less access to classes and services.

The 2006-07 budget proposes to reduce community college student fees from \$26 per semester unit to \$20 effective this Spring. This action was taken in response to recent fee increases imposed on students due to funding shortfalls.

I believe our policy works. Keeping student fees low coupled with the BOG fee waiver, Pell Grants, Work Study, Cal Grants and other forms of financial aid is a good balance of services to help students succeed.

13. What priorities and criteria has the board established for dispersing funds appropriated for improving career technical education?

The system has used a collaborative process to develop the optimum offerings working closely with State Department of Education and conducting stakeholder forums around the state. The funding opportunities also require time to create an application period for the field and organize competitive applications.

SB 70 created funding for a comprehensive improvement of Career Technical Education by assisting secondary schools to align and rebuild programs that link to California's high wage, high skill economy as served by the community college's economic development program.

Here's current roll-out:

- 74% of the funding has been awarded and the projects are functioning

- 20% of the funding is currently ending up in the application process with applications to be read the last week of July. (Strengthening existing K-12 CTE and Middle school/junior high career development)
- 6% is still associated with Requests for Applications that are being finalized.

14. What is the Chancellor's office doing to address the need for better coordination between K-12 and community college vocational programs? Have the community colleges collaborated with the K-12 community in distributing these funds and establishing the requirements for receiving the funds?

The system continues to collaborate with the K-12 community. There are on-going meetings with the Association of California School Administrators/California County Superintendents Educational Services Association coalition as well as the California Tech Prep community. Input is sought and provided through conferences and regional meetings. In Sacramento, upper management from CDE and COCOO confer, and program staff work collaborative on program design and roll-out.

All must work within the requirements of SB 70, the DoF approved expenditure plan, and rules on competitive local program support.

15. What is the Chancellor's office doing to ensure that a broad cross-section of colleges compete for this funding and that the funding reaches as many colleges as possible?

The Chancellor's Office and the California Department of Education are widely disseminating funding opportunities and providing technical assistance and bidder's workshops to assist potential applicants.

16. What role has the board played in coordinating with other state agencies, e.g. California Department of Corrections and Rehabilitation, CalWorks, and the Workforce Investment Office to improve access to educational opportunities for traditionally underserved or difficult-to-serve segments of the state's population? What strategies should the board promote to address these issues?

The Board supports the Chancellor and system staff to foster partnerships with a wide variety of state agencies including the state Department of Corrections and Rehabilitation, the BTH, the state Labor Agency, CalWorks, and the Workforce Investment Board among others. The objective of working collaboratively ensures smooth delivery and relevant CTE programs and courses that meet industry requirements as well as the needs of our students, many of whom are from traditionally underserved segments of the state's population.

For example, the Chancellor is a member of the Governor's Nursing Initiative through the state Labor Agency, along with the CSU Chancellor and UC President. The Nursing

Initiative is being implemented at the community colleges and one of its goals is to develop a nursing and healthcare workforce composed of culturally competent individuals reflecting the rich diversity of our state.

Also, the Chancellor's office works with BTH, representing the state's role in coordinating the work of the community college Small Business Development Centers (SBDC). The SBDC serves owners and would be owners of small businesses, many are from underserved populations of English language learners and economically disadvantaged backgrounds.

Given our scarce public resources the board needs to continue pursuing strategic partnerships with other state agencies. This provides an effective and cost effective model by leveraging our expertise and resources to address common challenges and reach common goals and non-duplication of efforts.

Bruce D. Varner

Senate Rules Committee

MAY 21 2007

Appointments

May 21, 2007

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

In response to the Senate Rules Committee letter of April 26 concerning my upcoming June 6 confirmation hearing before the Committee, please find attached an updated Form 700, Statement of Economic Interest. Included below are my responses to the 17 questions posed in the Committee's letter. I would be happy to discuss my responses to these questions or other matters either prior to or at the June 6 hearing.

Goals

1. *Please provide a brief statement of goals you hope to accomplish while serving on the University of California Board of Regents. How will you measure your success?*

The University of California is the finest public institution of higher learning in the world and my goal is to work with the other Regents and the University Administration to ensure that the University maintains that status. It is also my goal to be certain that the University continues its mission in providing education opportunities for California citizens as well as promoting scientific research that leads to economic growth and improvement of standard of living for California citizens; quality medical care to patients of the University's health care systems; and social, cultural and economic benefits to all the communities in which the University campuses are located. Our success will be measured by working with the other Regents and the University Administration to establish strategies and procedures to implement these goals and to require periodic, verbal and written reports, both at Regents' meetings and in the interim, from the University Administration to report their continuing progress.

2. *You have been assigned to serve on the Audit, Compensation, and Oversight of Department of Energy Labs committees. What specifically would you like to accomplish while serving on these committees?*

Senate Rules Committee

MAY 21 2007

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To-SENATE RULES COMMITTEE Page 002

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Audit Committee:

I intend to work with the Committee and the University Auditors to ensure that the University maintains appropriate policies and procedures to ensure the highest levels of financial integrity and ethical conduct, and rigid standards for all University employees and affiliates to prevent both the appearance of, and actual, conflicts of interest. Additionally, I intend to work with the Audit Committee and the University Auditor to ensure the University maintains and implements appropriate procedures to enforce compliance with all relevant laws and University policies and regulations governing financial reporting, ethical conduct and conflicts of interest.

Compensation Committee:

I intend to work with the Committee and the University Administrators to establish appropriate compensation ranges for all UC employees, and to ensure that all compensation issues are transparent, and are implemented and applied in accordance with the policies and procedures established by the Regents.

Oversight of Department of Energy Labs Committee:

It is important that the worldwide reputation of the University's labs be maintained and that fees generated from the labs are used to support scientific research, with emphasis on collaboration between the labs and the University scientists especially those supporting University graduate student research. I intend to work with the Committee and the University to achieve these goals.

Admission to the University

3. *The Legislative Analyst's Office predicts that growth in college-age population will slow sharply after 2009. Are the regents kept informed of enrollment trends and their immediate and long range implications for the UC system?*

The Regents are informed about trends in the state's college-age population and the implications those trends may have on the University. For example, we know that according to the California Department of Finance (on whose projections the University's enrollment plans are based), the number of California public high school graduates will decline slightly in 2009, reversing a long-time trend. The current UC enrollment plan runs through 2010 and work on the next plan, first announced at the January 2007 Regents meeting, is presently underway. I understand that the University expects to present the updated plan to the Legislature next spring.

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4. *What is the university doing to increase the number of competitively eligible applicants to UC from disadvantaged backgrounds? How do the regents monitor the effectiveness of university K-12 academic outreach programs in preparing these students to become competitively eligible to attend UC campuses? Are you satisfied that these programs are preparing students to succeed once enrolled at a UC campus?*

The University is committed to increasing the academic preparation and achievement of educationally disadvantaged students through programs and strategies that improve college opportunity. The University's Student Academic Preparation and Educational Partnerships (SAPEP) programs are designed to serve students at all levels, from kindergarten through graduate and professional programs.

The University has a comprehensive process for monitoring the effectiveness of its academic preparation programs. Each year, the University systematically collects data to show quantifiable outcomes produced by every program within the SAPEP portfolio in order to help demonstrate their effectiveness. The University reports on its findings to the Legislature and the Regents in a detailed annual report. This year's report shows provides compelling evidence of program effectiveness, including more students completing the University's admission requirements, passing the California High School Exit Exam, attending college and enrolling in graduate study, among other measures.

The Regents consider K-12 improvement so essential to the success of the future of the state and thus the University's own success that the Board adopted a statement that K-12 improvement is a fundamental part of UC's mission. I strongly endorse that action and believe that UC academic preparation programs are an essential part of UC's mission. Further, I support restoration of state funding for these programs because they are critical to the University's mission to serve the entire state.

5. *Should all the campuses implement comprehensive application reviews similar to what is being used at UCLA and UC Berkeley? Do the regents have a responsibility to reexamine admission policies at the campus level to help ensure that the student body reflects the population of California?*

Last year, the Regents created a Study Group on University Diversity to consider the impact of the University's eligibility and selection policies on student diversity. The task force is in the process of examining the history, current state, and future direction of diversity at the University. The task force, which is jointly chaired by Regent Parsky and Provost Hume, presented a progress report to the Regents at this month's Board meeting and will present a final report in September.

Since this report is due in September I believe it is prudent to await the study group's final report before determining whether comprehensive application reviews such as those in place at UC Berkeley and UCLA or alternative policies should be used by all UC campuses. However, the Regents must continue working with administration and faculty to ensure that the University's admissions policies reflect the needs of the University and the state.

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Student Fees, Financial Aid, and Overall College Affordability

6. *Is UC addressing the growing concerns about college affordability? What do you believe are the challenges in crafting a student fee and financial aid policy that balances the need to keep fees reasonable, while providing sufficient financial aid to help low- and moderate-income students?*

Maintaining the affordability of the University is critical, a cause to which I am personally committed. Maintaining affordability requires a partnership between the federal government, the state, and the University.

At the federal level, in 2007-08, the Federal Pell Grant maximum will increase by \$260, resulting in over \$10 million of new funding for Pell Grant recipients at UC. UC students will continue to benefit from two new Federal programs – the Academic Competitive Grant (ACG) and the Science & Mathematics Access to Retain Talent Grant (SMART) – which provided nearly \$20 million in new funding to UC students last year.

At the state level, in 2007-08, as in past years, the Cal Grant program will insulate nearly 25% of low- and middle-income UC undergraduates from the impact of the University's proposed fee increase.

And, at the institutional level, the University will set aside 33% of all new fee revenue for financial aid. This funding will be used to augment the University's own grant program, which complements federal and state programs to ensure that students are not expected to work or borrow at unmanageable levels. A portion of the funds will also be used to cover one-half of the fee increase for any student whose parent income is below \$100,000 and whose fee increase is not otherwise covered by the Cal Grant program or the University's traditional grant program.

A student fee and financial aid policy needs to be flexible enough to preserve both the quality of the University's instruction and the University's affordability for students. Because of strong state and University financial aid programs, the recent fee increases had no impact on the socioeconomic composition of the students who enrolled at UC.

If the state can provide basic support for the University, it is my position that any student fee increases should be minimized and should be gradual, moderate and predictable. Adequate state support is a critical component of a workable student fee policy to enable UC to maintain access under the Master Plan, to sustain academic quality, and to achieve the University's overall mission.

7. *What is the profile of students served by the University Grant Program? With the proposed fee increases, does the University Grant Program serve the needs of all UC students with unmet needs?*

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UC grant recipients are more socio-economically diverse than either Pell Grant or Cal Grant recipients. The University's program does not target a particular type of student; rather, it complements federal and state programs in order to equalize the amount that any UC student is expected to borrow or provide through work in order to finance his/her education.

In most cases, UC grants supplement other support that a student receives. The average UC grant is highest for independent students, for example, because although these students typically qualify for a Federal Pell Grant, they are less likely than other low-income students to meet the Cal Grant eligibility requirements. First-year Cal Grant B recipients also typically receive a UC grant since most first-year Cal Grant B awards only include an "access grant" of \$1,551.

Unlike other grant programs, UC grants are more sensitive to the actual need of a student given the other resources at the student's disposal – including an expected contribution from loan and work.

A student's total cost of attendance is typically fully covered by a combination of grant assistance (from UC and/or other sources), the student's federal expected parent contribution, and the student's self-help expectation from work and borrowing.

8. *What is the university doing to help students cover other fast growing non-fee costs, such as book and supplies, room and board, transportation, and health care?*

As previously noted, the University will return 33% of all new fee revenue to financial aid. These funds, in combination with Cal Grants, will allow the University to cover all fee increases plus a portion of the non-fee cost increases for UC grant recipients.

The \$260 increase in the Federal Pell Grant maximum will result in greater grant assistance to help students cover their non-fee costs. The University has also implemented a policy that requires any new campus fee increase to include a return-to-aid to help lessen the impact of those fees on needy students.

9. *Recent articles in the Los Angeles Times and the Wall Street Journal have highlighted alleged abuses in the relationship between financial-aid offices and student-loan companies. Are there general guidelines for lender practices at UC campuses? In your view, should there be a systemwide policy for lender practices?*

The University does not, at present, have systemwide guidelines for lender practices. However, in light of the recent alleged abuses, the President has directed the University's Vice President for Student Affairs, in conjunction with a workgroup including members from the offices of General Counsel and Internal Audit, campus Vice Chancellors and Associate/Assistant Vice Chancellors for Student Affairs, and campus financial aid directors, to formalize a written systemwide policy for the University's relationship with student loan providers. The directive requires the policy and

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Appointments Director
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implementing guidelines to be consistent with the principle that lending practices should focus on maximizing benefits to borrowers.

The President has also asked the University Auditor to coordinate internal audits on all UC campuses to ensure that safeguards are in place so that individuals who are in positions to influence student and family decisions regarding student aid, as well as campuses as business entities, engage in practices that are in compliance with law, policy, and the highest standards of ethical conduct.

Future of University Research and Academic Independence

10. *What is your view regarding BP's proposed new Energy Biosciences Institute? How do you respond to criticism that the plan deviates from traditional academic practices to keep a clear, arms-length distance from their corporate benefactors over academic research?*

My understanding is that BP will not control the Energy Biosciences Institute's (EBI) research agenda, nor will it control the research carried out by UC faculty. Rather, faculty and researchers will initiate the research directions to be pursued, and specific research projects to be funded will, indeed, be selected via a peer review process in which faculty and researchers select projects based on merit, similar to the process used by other funding agencies. UC faculty participating in research funded by EBI will be subject to extensive existing rules and policies governing disclosure of and managing of conflicts of interest. All research conducted by University researchers and students or conducted in University space will be subject to the University's normal policies and expectations regarding an open academic research environment, including publication to the end that all results from such research will be publicly disseminated.

I am aware that some concern has been expressed about the fact that BP plans to have a number of its own scientific employees conducting proprietary work in connection with the EBI. While BP will be allowed to carry out proprietary research in its own leased space (just as it would if it were conducting work in its own space adjacent to the campus), my understanding is that this work will be conducted solely by BP employees, rather than by University faculty and students.

With respect to intellectual property (IP), my understanding is that rights to inventions discovered by faculty of the research universities involved in EBI will be owned by the universities, consistent with U.S. patent law. While it is true that UC Berkeley anticipates granting BP a time-limited first right to negotiate an exclusive license to IP arising from certain work funded by BP through the EBI, this is standard practice for industry-sponsored research at universities (contrary to the impression given by some press reports that this is an unusual exception made for BP). Even if IP rights are licensed to BP, the University intends to require that BP diligently develop any licensed right to address relevant market needs, and will reserve the University's rights not only to use the results for its own purposes -- that is, to further its research, teaching, and public service mission -- but also to transfer rights to others in the nonprofit sector for their own similar purposes.

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I strongly agree with the President that the University's commitment to carrying out its research, teaching, and public service mission must be the primary consideration when entering into any relationship, including relationships with private business and industry. The principal purpose of the Energy Biosciences Institute -- to generate scientific breakthroughs related to sustainable energy, to help address an issue of global importance -- is entirely consistent with the University's mission.

11. *Do you believe this type of public-private research partnership is the wave of the future? If so, what safeguards should be put in place to protect the integrity of the public research institution?*

While I cannot predict what kind of partnership opportunities may present themselves in the future, I believe that partnering with industry is growing in importance, in part because industry plays such a critical role in turning scientific discoveries into useful products, technologies and services that can benefit the public. In addition to the important role industry plays in technology transfer, industry also provides a critical source of funding support for universities, supplementing funding from the Federal government (by far the most significant source of research funding), state and local government, and private individual and charitable foundation sources.

Concerning safeguards, the University is guided by several core principles that ensure that the University's fundamental values -- open dissemination of research results, public benefit, and commitment to students -- are protected. In addition, the University has extensive policies and procedures in place regarding disclosure of and management of conflicts of interest.

Executive Compensation

12. *In response to public concern, the university has committed to maintain full public disclosure, transparency, and accountability. What remains to be done to meet this commitment, how would you prioritize it, and what is the timeline?*

The Hertzberg/Kozberg Task Force, established by the Board, made 22 recommendations last year in the broad areas of areas of disclosure and transparency and governance. The Board adopted every single one of the recommendations and we expect the administration to move quickly to implement those recommendations. It is essential that senior leadership carefully craft its compensation policies and practices, rigorously implement and enforce them, and be held accountable. The California Constitution establishes UC as a public trust. As any institution we must be accountable and recover the trust of both the Legislature and the public.

The administration's progress on meeting each of those Task Force recommendations is laid out in a March report to the Legislature requested in last year's Budget Act. I would be happy to provide a copy of the report. While much has been accomplished, much still remains to be done.

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We are committed to public accountability and to correcting the administrative deficiencies identified during the executive compensation revelations last year.

13. *What performance measures and goals do the regents consider when reviewing executive compensation packages?*

As I indicated earlier, the Board of Regents holds the senior administration accountable and, in conjunction with the President, has established performance-based review for all executive compensation decisions. The Board established this performance-based review program last year for senior managers who report directly to the Regents. Those managers must submit annual goals to the Regents and they are judged on the basis of meeting those goals. These performance reviews are conducted in conjunction with the annual merit salary increase process. The performance measures and goals vary from person to person, depending on their roles and responsibilities. The process is designed to ensure that incumbents focus on the strategies and priorities that are most important to the Regents.

In addition, the President has established a task force with representatives from the Academic Senate, Human Resources and Academic Personnel to discuss the annual merit review process for senior managers. The task force is considering the establishment of standardized guidelines for leadership and administrative competencies, including peer reviews, similar to the performance evaluation process used for UC faculty.

14. *UC offers a variety of home loan programs as a tool to recruit highly sought-after faculty and senior leaders. The largest of these programs offered by UC is the Mortgage Origination Program, or MOP. Eligibility for MOP is limited and is at the discretion of campus chancellors and the president of the university. In your view, should MOP eligibility be made available to a larger pool of university employees?*

No, I do not think MOP eligibility can be made available to a larger pool without sacrificing the very reason for the program. Loan funding is limited and MOP is designed, as indicated in the question, to attract and retain faculty and senior administrators although the overwhelming majority of the MOP loans go to faculty.

In the last two year allocation cycle alone, there were about 14,000 eligible employees. A vast majority of these recruitments involved relocation and most of them were from out of state. As we all know, the cost of living in California is high and without the MOP program many of our recruiting efforts would not be successful.

While many employees could benefit from employer housing assistance, the funding is limited. If you look at the projected faculty growth and the replacement rates over the next several years, UC just cannot increase the eligibility pool and maintain the focus of the MOP program on faculty needs.

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Appointments Director
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UC Retirement Program

15. *Given that the university retirement program is currently funded at slightly over 100 percent, at what point are contributions into the fund absolutely necessary to maintain the fund at a minimum of 95 percent of its accrued liabilities (a UC regents' policy)?*

In March of last year, the Board established policy governing reinstatement of contributions. The Regents must restart of contributions to the University of California Retirement Plan (UCRP) before the surplus runs out. The restart has been formally endorsed by the Academic Senate. The Board is targeting full funding (100%) and not waiting until the minimum level of 95% is reached.

The latest actuarial report on UCRP indicates that when the surplus is depleted, the amount required to keep the plan fully funded will go from zero to the full normal cost (approximately 16% of payroll) very suddenly, possibly in only one or two years. Restarting contributions before the plan becomes under funded allows for lower initial contribution costs to employccs and the University and allows for more gradual increases in contributions over time, up to a level similar to contributions to CalPERS.

16. *According to the Legislative Analyst's Office, no other major public pension system in the United States has had such a long record of having been funded above 100 percent. In your view, does the state have an obligation to fund the employer-side contributions when the system is at or above 100 percent funded? Without additional funding from the state, how will UC fund its employer share of the retirement contributions?*

Yes, I believe the state has an obligation to fully fund UCRP, just as the state has an obligation to fund PERS or STRS. When contributions to UCRP ceased in the early 1990's, all entities stopped making contributions: UC employccs, UC as the employer and State of California. The state has enjoyed a 15 year contribution holiday or hiatus. Now it is time to restart our mutual historic obligation to fund UC employees' retirement benefits.

Reinstatement is a necessity, not a luxury. UC is still discussing contribution issues and I welcome the opportunity to work with the Legislature on this critical issue facing the University.

17. *UC intends to phase-in employer and employee contributions after a 15-year hiatus. What economic impact will this have on lower-wage employees? What is the university doing to minimize this impact?*

UC is committed to ensuring the immediate economic impact on all employees, including lower-wage workers, is minimized.

When employee contributions to the University of California Retirement Plan (UCRP) were suspended in the early 1990s, mandatory contributions were redirected to the University's Defined

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Appointments Director
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Contribution Plan (DC Plan). Those contributions amounted to approximately 2% of pay for UCRP members. The first phase of the employee contribution reinstatement will come from those contributions and there will not be any direct effect on the take-home pay of any employees. Subsequent increases will be gradual and phased in over several years.

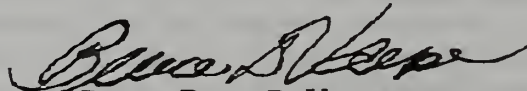
On the broader front, UC is working to address compensation for the lower wage employees. UC has reached an agreement for an increase for about 15,000 employees and has proposed similar wage increases for about 19,500 UPTe and AFSCME members. These increases are in addition to increases already provided for under current labor contracts for UC employees.

In addition, lower paid workers pay lower monthly health insurance premiums than higher paid employees which help shield them from increasing health insurance premiums.

The Board is committed to market-competitive compensation and benefits for all employees but to effectively reach that goal requires the help and partnership of the state.

Thank you for the opportunity to respond to these questions in advance of the June 6 hearing. If you have further questions or would like to discuss any of my responses, please call me.

Sincerely,



Regent Bruce D. Varner

BDV/cuh

Attachment - Updated Statement of Economic Interest (Form 700)



THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

WILLIAM DE LA PEÑA, M.D.
Regent

2446 W. Whittier Blvd.
Montebello, CA 90640-3041
(323) 728-5500

May 18, 2007

Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Thank you for the letter of April 26 concerning my upcoming June 6 confirmation hearing before the Senate Rules Committee. My responses to the 17 questions posed in the Committee's letter are included below. I would be happy to elaborate on these or other matters prior to or at the June 6 hearing.

Goals

1. *Please provide a brief statement of goals you hope to accomplish while serving on the University of California Board of Regents. How will you measure your success?*

As a Regent, my goal is to ensure the University of California maintains its excellence as a world class education institution and is positioned to provide access to an affordable first-rate postsecondary education to California students. The University not only provides unparalleled educational opportunities, but is a key contributor to California's continued economic development and growth. This can only be sustained if the excellence of and funding for the system is maintained. I will measure my success based upon continuation and advancement of these goals.

2. *You have been assigned to serve on the Investment and Health Services committees. What specifically would you like to accomplish while serving on these committees?*

As a member of the Investment Committee I want to work on the investment policies of the University such that, we can maximize, in socially responsible ways, the returns we obtain from our invested funds. Relative to the Health Services Committee, I would like to ensure we focus on our mission of research and teaching and providing quality health care for our patients. We need to examine the role the University plays in providing health care services to California's uninsured and making the benefits of UC's medical education and health services accessible to the underserved populations throughout the state.

Admission to the University

3. *The Legislative Analyst's Office predicts that growth in college-age population will slow sharply after 2009. Are the regents kept informed of enrollment trends and their immediate and long range implications for the UC system?*

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According to the California Department of Finance (on whose projections UC bases its enrollment plans), the number of California public high school graduates will decline slightly in 2009, reversing a long-time trend. The Regents are well aware of this information and the challenges it will pose for the University. UC's current enrollment plan runs through 2010 and work on the next enrollment plan – first announced at the January 2007 Regents meeting – is progressing. We expect to report to the Legislature on our updated enrollment plan next spring.

4. *What is the university doing to increase the number of competitively eligible applicants to UC from disadvantaged backgrounds? How do the regents monitor the effectiveness of university K-12 academic outreach programs in preparing these students to become competitively eligible to attend UC campuses? Are you satisfied that these programs are preparing students to succeed once enrolled at a UC campus?*

The University of California has a longstanding commitment to raising the academic achievement of educationally disadvantaged students by offering programs and strategies that improve college opportunity for thousands of students. The University of California's Student Academic Preparation and Educational Partnerships (SAPEP) programs serve students at all levels of the educational continuum, from kindergarten through graduate and professional programs. For example, the portfolio of secondary school programs includes three direct student initiatives: the MESA, Puente and EAOP programs.

The University has a comprehensive process for monitoring the effectiveness of its academic preparation programs. Every year, the University systematically collects data to show quantifiable outcomes produced by every program within the SAPEP portfolio in order to help demonstrate their effectiveness. The University reports on its findings to the Legislature and Regents in a detailed annual report. This year's report shows provides compelling evidence of program effectiveness and I hope it will assist in securing permanent state funding for these programs.

I believe we absolutely must continue to be involved in these efforts—it is part of our core mission, as stated by The Regents—and we cannot abandon our responsibility to work with K-12 and the other segments to help provide educational opportunities for all students.

5. *Should all the campuses implement comprehensive application reviews similar to what is being used at UCLA and UC Berkeley? Do the regents have a responsibility to reexamine admission policies at the campus level to help ensure that the student body reflects the population of California?*

The admissions model in use at Berkeley and now in use at UCLA has proven successful at yielding high quality incoming classes that better reflect the broad diversity of the state. The University is investigating actively the possibility of expanding this model of admission selection to other UC campuses. It is important to understand however, that UC campuses vary greatly in terms of who applies and the percentage of applicants that can be admitted. What works at Berkeley and UCLA may not be the most effective and efficient process at another campus. So while UC is very actively exploring this option, it would be a mistake to see it as a panacea.

One forum in which the impact of eligibility and selection policies is being discussed the Study Group on University Diversity, which The Regents created to examine the history, current state, and future direction of diversity at the University. The task force, which is jointly chaired by

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Regent Parsky and Provost Hume, presented a progress report to The Regents this May and will present a final report in September.

Any potential changes to admission policies would require faculty initiative. Since the early days of the University, The Regents have delegated responsibility for admissions policy to the faculty. Working on their campuses, faculty have designed selection processes that reflect both systemwide and campus priorities. The Regents will continue to work with the faculty to ensure that our admissions policies reflect the needs of the University and the state.

Student Fees, Financial Aid, and Overall College Affordability

6. *Is UC addressing the growing concerns about college affordability? What do you believe are the challenges in crafting a student fee and financial aid policy that balances the need to keep fees reasonable, while providing sufficient financial aid to help low- and moderate-income students?*

I am committed to ensuring that the University is financially accessible to all academically eligible students, regardless of their financial resources. Despite recent increases in fees and other categories of college expenses (e.g., living expenses and books and supplies), low- and moderate-income students continue to enroll at the University in large numbers.

Last year, 32% of all UC undergraduates had family resources that were low enough to qualify for a Federal Pell Grant. This percentage is higher than that of any other similarly selective research institution in the country, public or private. Enrollment of middle-income students has remained stable as well, indicating that the University remains financially accessible to these families as well.

A student fee and financial aid policy must be flexible enough to preserve both the quality of the University's instruction and the University's affordability for students. The decline in State funding for the University earlier this decade led to substantial fee increases in order to preserve the quality of a UC education. Because of strong State and University financial aid programs – and the high value that students and families associate with a UC education – these fee increases had no impact on the socioeconomic make-up of the students who enrolled at UC.

Student fee and financial aid policies are often characterized as either “high fee / high aid” or “low fee / low aid.” A major challenge for the University and the State is how to strike the right balance between these two approaches. There is no simple way to determine the “best” approach. However, the University constantly monitors trends in enrollment and an array of affordability indicators (such as student loan debt) to evaluate its policies.

7. *What is the profile of students served by the University Grant Program? With the proposed fee increases, does the University Grant Program serve the needs of all UC students with unmet needs?*

UC grant recipients are more socio-economically diverse than either Pell Grant or Cal Grant recipients. The University's program does not target a particular “type” of student: rather, it complements Federal and State programs in order to equalize the amount that any UC student is expected to work or borrow in order to finance his education.

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In some instances, UC grant assistance is the only source of a student's grant support. For example, a student with a combined parent income of \$85,000 would generally be ineligible for either a Cal Grant or a Pell Grant, but might be eligible for a UC grant if the family has two or more students in college.

A student's UC grant fills in the remaining gap, if any, after taking into account the student's total cost of attendance (not just fees), the student's parental resources, the student's self-help expectation from work and borrowing, and the other grants received by the student. Hence, every aspect of a student's cost of attendance is covered by one of these fund sources (grants, the federal expected parent contribution, and the student's self-help component from work and borrowing). Unlike other grant programs, UC grants are more sensitive to the actual need of a student given the other resources at the student's disposal – including an expected contribution from loan and work.

8. *What is the University doing to help students cover other fast-growing non-fee costs, such as book and supplies, room and board, transportation, and health care?*

In 2007-08, the University will return 33% of all new fee revenue to financial aid. These funds, in combination with Cal grants, will allow the University to cover all fee increases plus a portion of the non-fee cost increases for UC grant recipients.

In addition, the \$260 increase in the Federal Pell Grant maximum will result in greater grant assistance to help students cover their non-fee costs.

The University has also implemented a policy that requires any new campus fee increase to include a return-to-aid to help lessen the impact of those fees on needy students.

9. *Recent articles in the Los Angeles Times and the Wall Street Journal have highlighted alleged abuses in the relationship between financial aid offices and student loan companies. Are there general guidelines for lender practices at UC campuses? In your view, should there be a systemwide policy for lender practices?*

At present, the University does not have systemwide guidelines for lender practices. However, the President has directed the University's Vice President for Student Affairs, in conjunction with a workgroup including members from General Counsel, Internal Audit, campus Vice Chancellors and Associate/Assistant Vice Chancellors for Student Affairs, and campus financial aid directors, to formalize a written systemwide policy for the University's relationship with student loan providers. The policy and associated implementing guidelines will be consistent with the principle that lending practices should be focused on maximizing benefits to borrowers.

In addition, the President has asked the University Auditor at the Office of the President to coordinate internal audits on all UC campuses to ensure that safeguards are in place so that individuals who are in positions to influence student and family decisions regarding student aid, as well as campuses as business entities, engage in practices that are in compliance with law, policy, and the highest standards of ethical conduct.

Future of University Research and Academic Independence

10. *What is your view regarding BP's proposed new Energy Biosciences Institute? How do you respond to criticism that the plan deviates from traditional academic practices to*

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keep a clear, arms-length distance from their corporate benefactors over academic research?

The significant ten-year award recently announced by BP will allow UC Berkeley to lead a research consortium (which will also include Lawrence Berkeley National Laboratory and the University of Illinois – Urbana-Champaign as partners) in establishing an Energy Biosciences Institute (EBI) to bring together experts from a variety of disciplines to conduct research that can lead to development of alternative and renewable sources of energy and that can explore ways to reduce the environmental impact of energy consumption. This is an important area of research on a matter of pressing worldwide concern, and I expect that the University will provide the leadership and expertise needed to ensure that the EBI's research will be of significant public benefit.

After consulting with individuals within the University knowledgeable about the BP award, I have learned that the arrangement with BP does not represent a major departure from traditional academic safeguards to preserve the University's independence, as suggested by the paragraph introducing this question. Nor is the enumerated list of features of the negotiated agreement with BP accurate – in fact, the specific terms of UC Berkeley's agreement have yet to be negotiated. UC Berkeley is in the midst of negotiating the agreement with BP, and UCB leadership is keenly aware of areas of potential concern. I believe and trust that they will conduct a careful review that will ensure that the final agreement is one that promotes high quality research conducted in a way that is consistent with the University's values and that preserves the University's independence to carry out its mission of research, teaching and public service.

Contrary to the impression that may have been given by some media accounts, my understanding is that BP will not control the EBI's research agenda, nor will it control the research carried out by UC faculty. Rather, faculty and researchers will initiate the research directions to be pursued, and specific research projects to be funded will, indeed, be selected via a peer review process in which faculty and researchers select projects based on merit, similar to the process used by other funding agencies. UC faculty participating in research funded by EBI will, indeed, be subject to extensive existing rules and policies governing disclosure of and managing of conflicts of interest. All research conducted by University researchers and students or conducted in University space will be subject to the University's normal policies and expectations regarding an open academic research environment, including publication (that is, results from such research will be publicly disseminated).

I appreciate the perspective of those who have raised potential areas of concern about the BP award, and believe that many of their concerns stem from a desire – which I share – of ensuring that corporate interests do not cause the University to deviate from its long-standing tradition of excellence and commitment to carrying out its public purpose. I believe that leadership on all the University's campuses is similarly committed to this goal. I strongly agree with the President that the University's commitment to carrying out its research, teaching, and public service mission must have primacy in its consideration of entering into any relationship, including relationships with industry. The primary purpose of the Energy Biosciences Institute – to generate scientific breakthroughs related to sustainable energy, to help address an issue of global importance – is, it seems to me, is entirely consistent with the University's mission.

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11. *Do you believe this type of public-private research partnership is the wave of the future? If so, what safeguards should be put in place to protect the integrity of the public research institution?*

For land grant institutions like the University of California, there is a long tradition of collaborating with industry in support of instruction, research and public service. While I cannot predict what kind of partnership opportunities may present themselves in the future, I do believe that partnering with industry is increasingly important, in part because industry plays such an important role in helping develop research innovations discovered by University scientists into useful products, technologies and services that can benefit the public. In addition to the important role industry plays in technology transfer, industry also provides a critical source of funding support for universities, supplementing funding from the federal government (by far the most significant source of research funding), state and local government, and private individual and charitable foundation sources.

With respect to safeguards -- In entering into an agreement with any external funder, including an industry source like BP, the University is guided by a number of core principles that ensure that the University's fundamental values -- including open dissemination of University research results, public benefit, and commitment to students -- are safeguarded. In addition, the University has extensive policies and procedures in place regarding disclosure of and management of conflicts of interest. In part because the University is a public institution, significant agreements like the one with BP are the focus of much attention and comment by both internal and external stakeholders. While there are sometimes misperceptions or misinformation in the public arena about the specifics of these agreements (as evidenced by the inaccuracies in some of the press coverage of the BP award), ultimately the public spotlight serves as another kind of safeguard.

Executive Compensation

12. *In response to public concern, the university has committed to maintain full public disclosure, transparency, and accountability. What remains to be done to meet this commitment, how would you prioritize it, and what is the timeline?*

While the University has implemented a variety of reforms for disclosing and reporting compensation information, it is also moving systematically to review and revise its compensation policies and practices.

The University, with the assistance of Mercer Human Resource Consulting, has embarked on a comprehensive, thorough, far-reaching review and overhaul of compensation and related policies for senior managers. The goal of this project is to develop policies that are clear, consistent, transparent, easily understood, and provide guidance on when and how exceptions may occur.

This process will also address any conflicts between policies for senior managers and policies for academics, including bringing clarity to those policies for senior managers that also hold academic appointments. I understand that this is not a quick or easy undertaking since existing University policies were often developed ad hoc and were often implemented with overlapping or conflicting provisions. The effort will also include a process by which policies are reviewed and updated on a regular basis. The University informs me that the majority of this work to be completed in 2007.

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13. *What performance measures and goals do the regents consider when reviewing executive compensation packages?*

A new performance management program was instituted last year for senior-level University personnel who report directly to The Regents. The program is designed to ensure that the University's senior managers focus on the strategies and priorities that are of utmost importance to The Regents. Each senior manager who reports to The Regents must submit annual goals to the Regents prior to the start of the performance period and each receives feedback on their performance in meeting these goals from The Regents at the end of year. These performance reviews are conducted in conjunction with the annual merit salary increase process. The performance measures and goals vary from person to person, depending on their individual roles and responsibilities.

In addition, a task force with representatives from the Academic Senate, Human Resources and Academic Personnel has been established to review and discuss the annual merit review process for senior managers. The task force is considering the establishment of standardized guidelines that include specific leadership and administrative competencies to be reviewed and a process that incorporates peer reviews, similar to the performance evaluation process used for UC faculty.

12. *UC offers a variety of home loan programs as a tool to recruit highly sought-after faculty and senior leaders. The largest of these programs offered by UC is the Mortgage Origination Program, or MOP. Eligibility for MOP is limited and is at the discretion of campus chancellors and the president of the university. In your view, should MOP eligibility be made available to a larger pool of university employees?*

MOP loans are primarily available to members of the Academic Senate and the Senior Management Group and are targeted to assist in the purchase of the first home in the market area near the work location. For the last allocation cycle, there were approximately 14,000 positions in these eligible groups. A vast majority of these recruitments involve relocation and most of those are from out of state. Other positions that involve national or statewide recruitment and/or will be directing major University programs or business areas may also be approved for loan program participation on a case-by-case basis.

While many employees would most likely benefit from employer housing assistance, the source of funding for these programs is limited. Given those limitations, coupled with the projected faculty growth and replacement rates for the next several years, I believe it would be difficult for the University to greatly increase the eligibility pool and still maintain the focus of the programs on faculty needs.

UC Retirement Program

15. *Given that the university retirement program is currently funded at slightly over 100 percent, at what point are contributions into the fund absolutely necessary to maintain the fund at a minimum of 95 percent of its accrued liabilities (a UC regents' policy)?*

In March 2006, The Regents' adopted a reinstatement policy that provides for the restart of contributions to the University of California Retirement Plan (UCRP) before the surplus in the plan runs out. The Regents believe they are fulfilling their fiduciary duty to the plan by targeting

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full funding (100%) and not waiting until the minimum level of 95% is reached. This approach requires a timely restart of contributions to the plan.

The latest actuarial report on UCRP notes that when the surplus is depleted, the amount required to keep the plan fully funded will go from zero to the full normal cost (approximately 16% of payroll) very suddenly, i.e., in only one or two years. Restarting contributions before the plan becomes underfunded allows for lower initial contribution costs to employees and the University and allows for more gradual increases in contributions over time, up to a level similar to contributions to CalPERS.

The Regents' intent to restart contributions in this manner has been formally endorsed by the University's Academic Senate. This Regents' policy is intended to keep UCRP financially stable for the future and help prevent the problems that many other public pension funds are currently experiencing and will potentially avoid a future burden to the taxpayers of California.

16. *According to the Legislative Analyst's Office, no other major public system in the United States has had such a long record of having been funded above 100 percent. In your view, does the state have an obligation to fund the employer-side contributions when the system is at or above 100 percent funded? Without additional funding from the state, how will UC fund its employer share of the retirement contributions?*

At the November 2006 meeting, The Regents approved the submission a state budget proposal for 2007–08 including a request that would enable the University to match employee contribution levels to the UC Retirement Plan (UCRP) when such contributions to the plan are reinstated. Consistent with The Regents' view, noted above, of their fiduciary responsibility to keep the plan fully funded, the University believes that the state also has an obligation to fund the plan. The Regents have not decided what approach they will take without state funding for this purpose.

17. *UC intends to phase-in employer and employee contributions after a 15-year hiatus. What economic impact will this have on lower-wage employees? What is the university doing to minimize this impact?*

When employee contributions to the University of California Retirement Plan (UCRP) were no longer required in the early 1990's, mandatory contributions amounting to approximately 2% of pay for UCRP members were redirected to the University's Defined Contribution Plan (DC Plan). Such redirected contributions are invested in various tax deferred accounts of the employee's choosing and earn various rates of return. The total in each employee's account is available to them upon retirement or separation from the University.

The Regents have determined that the first phase of reinstated employee contributions to UCRP would come from the amount currently contributed to the DC Plan (about 2% of pay), which would again be redirected to UCRP. This initial phase would therefore not affect the take-home pay of lower paid workers, although it would decrease the amount of employees' money going into their tax-deferred savings accounts in the DC Plan.

UC recently reached an agreement with the Coalition of University Employees union regarding special salary increases for more than 11,800 UC clerical employees, and also provided similar raises to approximately 4,000 non-represented lower-paid employees. UC has also proposed similar wage increases for approximately 19,500 other lower-paid UC employees represented

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by the University Professional and Technical Employees and American Federation of State, County and Municipal Employees unions. These increases would be in addition to those already provided, or scheduled to be provided, under current labor contracts for UC workers.

While the University is still in negotiations over the increases with AFSCME and UPTE, the proposal provides evidence of UC's commitment to assist lower-paid workers. In addition, UC has for several years helped to shield lower-paid employees from increasing health insurance premiums, by adopting a salary-based approach to health insurance so that lower-paid employees pay lower monthly premiums than higher-paid employees.

Finally, The Regents have set achieving market-competitive compensation and benefits for all employees as one of its highest priorities. UC is working to realize this goal but will only be able to achieve it with the commitment and funding from the State and other sources. This commitment would benefit low-wage workers in positions that have market based salary lags, as well as all levels of UC's workforce in similar circumstances.

Thank you for the opportunity to respond to some of your questions in advance of the June 6 hearing. If you have further questions prior to that or would like to discuss any of my responses, please call me.

Sincerely,

Regent William De La Pena

Bruce D. Varner

Senate Rules Committee

MAY 21 2007

Appointments

May 21, 2007

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

In response to the Senate Rules Committee letter of April 26 concerning my upcoming June 6 confirmation hearing before the Committee, please find attached an updated Form 700, Statement of Economic Interest. Included below are my responses to the 17 questions posed in the Committee's letter. I would be happy to discuss my responses to these questions or other matters either prior to or at the June 6 hearing.

Goals

1. *Please provide a brief statement of goals you hope to accomplish while serving on the University of California Board of Regents. How will you measure your success?*

The University of California is the finest public institution of higher learning in the world and my goal is to work with the other Regents and the University Administration to ensure that the University maintains that status. It is also my goal to be certain that the University continues its mission in providing education opportunities for California citizens as well as promoting scientific research that leads to economic growth and improvement of standard of living for California citizens; quality medical care to patients of the University's health care systems; and social, cultural and economic benefits to all the communities in which the University campuses are located. Our success will be measured by working with the other Regents and the University Administration to establish strategies and procedures to implement these goals and to require periodic, verbal and written reports, both at Regents' meetings and in the interim, from the University Administration to report their continuing progress.

2. *You have been assigned to serve on the Audit, Compensation, and Oversight of Department of Energy Labs committees. What specifically would you like to accomplish while serving on these committees?*

Senate Rules Committee

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Appointments

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Audit Committee:

I intend to work with the Committee and the University Auditors to ensure that the University maintains appropriate policies and procedures to ensure the highest levels of financial integrity and ethical conduct, and rigid standards for all University employees and affiliates to prevent both the appearance of, and actual, conflicts of interest. Additionally, I intend to work with the Audit Committee and the University Auditor to ensure the University maintains and implements appropriate procedures to enforce compliance with all relevant laws and University policies and regulations governing financial reporting, ethical conduct and conflicts of interest.

Compensation Committee:

I intend to work with the Committee and the University Administrators to establish appropriate compensation ranges for all UC employees, and to ensure that all compensation issues are transparent, and are implemented and applied in accordance with the policies and procedures established by the Regents.

Oversight of Department of Energy Labs Committee:

It is important that the worldwide reputation of the University's labs be maintained and that fees generated from the labs are used to support scientific research, with emphasis on collaboration between the labs and the University scientists especially those supporting University graduate student research. I intend to work with the Committee and the University to achieve these goals.

Admission to the University

3. *The Legislative Analyst's Office predicts that growth in college-age population will slow sharply after 2009. Are the regents kept informed of enrollment trends and their immediate and long range implications for the UC system?*

The Regents are informed about trends in the state's college-age population and the implications those trends may have on the University. For example, we know that according to the California Department of Finance (on whose projections the University's enrollment plans are based), the number of California public high school graduates will decline slightly in 2009, reversing a long-time trend. The current UC enrollment plan runs through 2010 and work on the next plan, first announced at the January 2007 Regents meeting, is presently underway. I understand that the University expects to present the updated plan to the Legislature next spring.

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4. *What is the university doing to increase the number of competitively eligible applicants to UC from disadvantaged backgrounds? How do the regents monitor the effectiveness of university K-12 academic outreach programs in preparing these students to become competitively eligible to attend UC campuses? Are you satisfied that these programs are preparing students to succeed once enrolled at a UC campus?*

The University is committed to increasing the academic preparation and achievement of educationally disadvantaged students through programs and strategies that improve college opportunity. The University's Student Academic Preparation and Educational Partnerships (SAPEP) programs are designed to serve students at all levels, from kindergarten through graduate and professional programs.

The University has a comprehensive process for monitoring the effectiveness of its academic preparation programs. Each year, the University systematically collects data to show quantifiable outcomes produced by every program within the SAPEP portfolio in order to help demonstrate their effectiveness. The University reports on its findings to the Legislature and the Regents in a detailed annual report. This year's report shows provides compelling evidence of program effectiveness, including more students completing the University's admission requirements, passing the California High School Exit Exam, attending college and enrolling in graduate study, among other measures.

The Regents consider K-12 improvement so essential to the success of the future of the state and thus the University's own success that the Board adopted a statement that K-12 improvement is a fundamental part of UC's mission. I strongly endorse that action and believe that UC academic preparation programs are an essential part of UC's mission. Further, I support restoration of state funding for these programs because they are critical to the University's mission to serve the entire state.

5. *Should all the campuses implement comprehensive application reviews similar to what is being used at UCLA and UC Berkeley? Do the regents have a responsibility to reexamine admission policies at the campus level to help ensure that the student body reflects the population of California?*

Last year, the Regents created a Study Group on University Diversity to consider the impact of the University's eligibility and selection policies on student diversity. The task force is in the process of examining the history, current state, and future direction of diversity at the University. The task force, which is jointly chaired by Regent Parsky and Provost Hume, presented a progress report to the Regents at this month's Board meeting and will present a final report in September.

Since this report is due in September I believe it is prudent to await the study group's final report before determining whether comprehensive application reviews such as those in place at UC Berkeley and UCLA or alternative policies should be used by all UC campuses. However, the Regents must continue working with administration and faculty to ensure that the University's admissions policies reflect the needs of the University and the state.

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Student Fees, Financial Aid, and Overall College Affordability

6. *Is UC addressing the growing concerns about college affordability? What do you believe are the challenges in crafting a student fee and financial aid policy that balances the need to keep fees reasonable, while providing sufficient financial aid to help low- and moderate-income students?*

Maintaining the affordability of the University is critical, a cause to which I am personally committed. Maintaining affordability requires a partnership between the federal government, the state, and the University.

At the federal level, in 2007-08, the Federal Pell Grant maximum will increase by \$260, resulting in over \$10 million of new funding for Pell Grant recipients at UC. UC students will continue to benefit from two new Federal programs – the Academic Competitive Grant (ACG) and the Science & Mathematics Access to Retain Talent Grant (SMART) – which provided nearly \$20 million in new funding to UC students last year.

At the state level, in 2007-08, as in past years, the Cal Grant program will insulate nearly 25% of low- and middle-income UC undergraduates from the impact of the University's proposed fee increase.

And, at the institutional level, the University will set aside 33% of all new fee revenue for financial aid. This funding will be used to augment the University's own grant program, which complements federal and state programs to ensure that students are not expected to work or borrow at unmanageable levels. A portion of the funds will also be used to cover one-half of the fee increase for any student whose parent income is below \$100,000 and whose fee increase is not otherwise covered by the Cal Grant program or the University's traditional grant program.

A student fee and financial aid policy needs to be flexible enough to preserve both the quality of the University's instruction and the University's affordability for students. Because of strong state and University financial aid programs, the recent fee increases had no impact on the socioeconomic composition of the students who enrolled at UC.

If the state can provide basic support for the University, it is my position that any student fee increases should be minimized and should be gradual, moderate and predictable. Adequate state support is a critical component of a workable student fee policy to enable UC to maintain access under the Master Plan, to sustain academic quality, and to achieve the University's overall mission.

7. *What is the profile of students served by the University Grant Program? With the proposed fee increases, does the University Grant Program serve the needs of all UC students with unmet needs?*

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UC grant recipients are more socio-economically diverse than either Pell Grant or Cal Grant recipients. The University's program does not target a particular type of student; rather, it complements federal and state programs in order to equalize the amount that any UC student is expected to borrow or provide through work in order to finance his/her education.

In most cases, UC grants supplement other support that a student receives. The average UC grant is highest for independent students, for example, because although these students typically qualify for a Federal Pell Grant, they are less likely than other low-income students to meet the Cal Grant eligibility requirements. First-year Cal Grant B recipients also typically receive a UC grant since most first-year Cal Grant B awards only include an "access grant" of \$1,551.

Unlike other grant programs, UC grants are more sensitive to the actual need of a student given the other resources at the student's disposal – including an expected contribution from loan and work.

A student's total cost of attendance is typically fully covered by a combination of grant assistance (from UC and/or other sources), the student's federal expected parent contribution, and the student's self-help expectation from work and borrowing.

8. *What is the university doing to help students cover other fast growing non-fee costs, such as book and supplies, room and board, transportation, and health care?*

As previously noted, the University will return 33% of all new fee revenue to financial aid. These funds, in combination with Cal Grants, will allow the University to cover all fee increases plus a portion of the non-fee cost increases for UC grant recipients.

The \$260 increase in the Federal Pell Grant maximum will result in greater grant assistance to help students cover their non-fee costs. The University has also implemented a policy that requires any new campus fee increase to include a return-to-aid to help lessen the impact of those fees on needy students.

9. *Recent articles in the Los Angeles Times and the Wall Street Journal have highlighted alleged abuses in the relationship between financial-aid offices and student-loan companies. Are there general guidelines for lender practices at UC campuses? In your view, should there be a systemwide policy for lender practices?*

The University does not, at present, have systemwide guidelines for lender practices. However, in light of the recent alleged abuses, the President has directed the University's Vice President for Student Affairs, in conjunction with a workgroup including members from the offices of General Counsel and Internal Audit, campus Vice Chancellors and Associate/Assistant Vice Chancellors for Student Affairs, and campus financial aid directors, to formalize a written systemwide policy for the University's relationship with student loan providers. The directive requires the policy and

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implementing guidelines to be consistent with the principle that lending practices should focus on maximizing benefits to borrowers.

The President has also asked the University Auditor to coordinate internal audits on all UC campuses to ensure that safeguards are in place so that individuals who are in positions to influence student and family decisions regarding student aid, as well as campuses as business entities, engage in practices that are in compliance with law, policy, and the highest standards of ethical conduct.

Future of University Research and Academic Independence

10. *What is your view regarding BP's proposed new Energy Biosciences Institute? How do you respond to criticism that the plan deviates from traditional academic practices to keep a clear, arms-length distance from their corporate benefactors over academic research?*

My understanding is that BP will not control the Energy Biosciences Institute's (EBI) research agenda, nor will it control the research carried out by UC faculty. Rather, faculty and researchers will initiate the research directions to be pursued, and specific research projects to be funded will, indeed, be selected via a peer review process in which faculty and researchers select projects based on merit, similar to the process used by other funding agencies. UC faculty participating in research funded by EBI will be subject to extensive existing rules and policies governing disclosure of and managing of conflicts of interest. All research conducted by University researchers and students or conducted in University space will be subject to the University's normal policies and expectations regarding an open academic research environment, including publication to the end that all results from such research will be publicly disseminated.

I am aware that some concern has been expressed about the fact that BP plans to have a number of its own scientific employees conducting proprietary work in connection with the EBI. While BP will be allowed to carry out proprietary research in its own leased space (just as it would if it were conducting work in its own space adjacent to the campus), my understanding is that this work will be conducted solely by BP employees, rather than by University faculty and students.

With respect to intellectual property (IP), my understanding is that rights to inventions discovered by faculty of the research universities involved in EBI will be owned by the universities, consistent with U.S. patent law. While it is true that UC Berkeley anticipates granting BP a time-limited first right to negotiate an exclusive license to IP arising from certain work funded by BP through the EBI, this is standard practice for industry-sponsored research at universities (contrary to the impression given by some press reports that this is an unusual exception made for BP). Even if IP rights are licensed to BP, the University intends to require that BP diligently develop any licensed right to address relevant market needs, and will reserve the University's rights not only to use the results for its own purposes -- that is, to further its research, teaching, and public service mission -- but also to transfer rights to others in the nonprofit sector for their own similar purposes.

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I strongly agree with the President that the University's commitment to carrying out its research, teaching, and public service mission must be the primary consideration when entering into any relationship, including relationships with private business and industry. The principal purpose of the Energy Biosciences Institute -- to generate scientific breakthroughs related to sustainable energy, to help address an issue of global importance -- is entirely consistent with the University's mission.

11. *Do you believe this type of public-private research partnership is the wave of the future? If so, what safeguards should be put in place to protect the integrity of the public research institution?*

While I cannot predict what kind of partnership opportunities may present themselves in the future, I believe that partnering with industry is growing in importance, in part because industry plays such a critical role in turning scientific discoveries into useful products, technologies and services that can benefit the public. In addition to the important role industry plays in technology transfer, industry also provides a critical source of funding support for universities, supplementing funding from the Federal government (by far the most significant source of research funding), state and local government, and private individual and charitable foundation sources.

Concerning safeguards, the University is guided by several core principles that ensure that the University's fundamental values -- open dissemination of research results, public benefit, and commitment to students -- are protected. In addition, the University has extensive policies and procedures in place regarding disclosure of and management of conflicts of interest.

Executive Compensation

12. *In response to public concern, the university has committed to maintain full public disclosure, transparency, and accountability. What remains to be done to meet this commitment, how would you prioritize it, and what is the timeline?*

The Hertzberg/Kozberg Task Force, established by the Board, made 22 recommendations last year in the broad areas of areas of disclosure and transparency and governance. The Board adopted every single one of the recommendations and we expect the administration to move quickly to implement those recommendations. It is essential that senior leadership carefully craft its compensation policies and practices, rigorously implement and enforce them, and be held accountable. The California Constitution establishes UC as a public trust. As any institution we must be accountable and recover the trust of both the Legislature and the public.

The administration's progress on meeting each of those Task Force recommendations is laid out in a March report to the Legislature requested in last year's Budget Act. I would be happy to provide a copy of the report. While much has been accomplished, much still remains to be done.

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We are committed to public accountability and to correcting the administrative deficiencies identified during the executive compensation revelations last year.

13. *What performance measures and goals do the regents consider when reviewing executive compensation packages?*

As I indicated earlier, the Board of Regents holds the senior administration accountable and, in conjunction with the President, has established performance-based review for all executive compensation decisions. The Board established this performance-based review program last year for senior managers who report directly to the Regents. Those managers must submit annual goals to the Regents and they are judged on the basis of meeting those goals. These performance reviews are conducted in conjunction with the annual merit salary increase process. The performance measures and goals vary from person to person, depending on their roles and responsibilities. The process is designed to ensure that incumbents focus on the strategies and priorities that are most important to the Regents.

In addition, the President has established a task force with representatives from the Academic Senate, Human Resources and Academic Personnel to discuss the annual merit review process for senior managers. The task force is considering the establishment of standardized guidelines for leadership and administrative competencies, including peer reviews, similar to the performance evaluation process used for UC faculty.

14. *UC offers a variety of home loan programs as a tool to recruit highly sought-after faculty and senior leaders. The largest of these programs offered by UC is the Mortgage Origination Program, or MOP. Eligibility for MOP is limited and is at the discretion of campus chancellors and the president of the university. In your view, should MOP eligibility be made available to a larger pool of university employees?*

No, I do not think MOP eligibility can be made available to a larger pool without sacrificing the very reason for the program. Loan funding is limited and MOP is designed, as indicated in the question, to attract and retain faculty and senior administrators although the overwhelming majority of the MOP loans go to faculty.

In the last two year allocation cycle alone, there were about 14,000 eligible employees. A vast majority of these recruitments involved relocation and most of them were from out of state. As we all know, the cost of living in California is high and without the MOP program many of our recruiting efforts would not be successful.

While many employees could benefit from employer housing assistance, the funding is limited. If you look at the projected faculty growth and the replacement rates over the next several years, UC just cannot increase the eligibility pool and maintain the focus of the MOP program on faculty needs.

Ms. Nettie Sabelhaus
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UC Retirement Program

15. *Given that the university retirement program is currently funded at slightly over 100 percent, at what point are contributions into the fund absolutely necessary to maintain the fund at a minimum of 95 percent of its accrued liabilities (a UC regents' policy)?*

In March of last year, the Board established policy governing reinstatement of contributions. The Regents must restart of contributions to the University of California Retirement Plan (UCRP) before the surplus runs out. The restart has been formally endorsed by the Academic Senate. The Board is targeting full funding (100%) and not waiting until the minimum level of 95% is reached.

The latest actuarial report on UCRP indicates that when the surplus is depleted, the amount required to keep the plan fully funded will go from zero to the full normal cost (approximately 16% of payroll) very suddenly, possibly in only one or two years. Restarting contributions before the plan becomes under funded allows for lower initial contribution costs to employees and the University and allows for more gradual increases in contributions over time, up to a level similar to contributions to CalPERS.

16. *According to the Legislative Analyst's Office, no other major public pension system in the United States has had such a long record of having been funded above 100 percent. In your view, does the state have an obligation to fund the employer-side contributions when the system is at or above 100 percent funded? Without additional funding from the state, how will UC fund its employer share of the retirement contributions?*

Yes, I believe the state has an obligation to fully fund UCRP, just as the state has an obligation to fund PERS or STRS. When contributions to UCRP ceased in the early 1990's, all entities stopped making contributions: UC employees, UC as the employer and State of California. The state has enjoyed a 15 year contribution holiday or hiatus. Now it is time to restart our mutual historic obligation to fund UC employees' retirement benefits.

Reinstatement is a necessity, not a luxury. UC is still discussing contribution issues and I welcome the opportunity to work with the Legislature on this critical issue facing the University.

17. *UC intends to phase-in employer and employee contributions after a 15-year hiatus. What economic impact will this have on lower-wage employees? What is the university doing to minimize this impact?*

UC is committed to ensuring the immediate economic impact on all employees, including lower-wage workers, is minimized.

When employee contributions to the University of California Retirement Plan (UCRP) were suspended in the early 1990s, mandatory contributions were redirected to the University's Defined

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
March 21, 2007
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Contribution Plan (DC Plan). Those contributions amounted to approximately 2% of pay for UCRP members. The first phase of the employee contribution reinstatement will come from those contributions and there will not be any direct effect on the take-home pay of any employees. Subsequent increases will be gradual and phased in over several years.

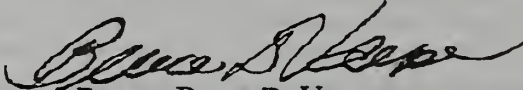
On the broader front, UC is working to address compensation for the lower wage employees. UC has reached an agreement for an increase for about 15,000 employees and has proposed similar wage increases for about 19,500 UPTE and AFSCME members. These increases are in addition to increases already provided for under current labor contracts for UC employees.

In addition, lower paid workers pay lower monthly health insurance premiums than higher paid employees which help shield them from increasing health insurance premiums.

The Board is committed to market-competitive compensation and benefits for all employees but to effectively reach that goal requires the help and partnership of the state.

Thank you for the opportunity to respond to these questions in advance of the June 6 hearing. If you have further questions or would like to discuss any of my responses, please call me.

Sincerely,



Regent Bruce D. Varner

BDV/cuh

Attachment - Updated Statement of Economic Interest (Form 700)

569-R

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

JOHN F. MONDAY, Executive Officer
Board of Parole Hearings

SENATOR ROBERT PRESLEY, Former Secretary,
Youth and Adult Correctional Agency

JAMES B. ANDRES, Deputy Commissioner
Board of Parole Hearings

MATT GRAY
Taxpayers for Improving Public Safety

JILL KLINGE, Deputy District Attorney
Alameda County
California District Attorneys' Association

1 SARA L. DANVILLE, Deputy District Attorney
Riverside District Attorney's Office

2 DONALD MILLER, Former Lifer Inmate
3 Miller Paralegal

4 RAMON ESTRADA, President
5 Association of California Parole and Deputy Commissioners

6 JANICE K. ENG, Commissioner
Board of Parole Hearings

7 CAROLYN DEVINE, President
8 California Women's Leadership Association
9 Bay Area Chapter

10 EDWARD MARTINEZ, Commissioner
Board of Parole Hearings

11 BILL SCHMIDT
12 Private Attorney

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The Rules Committee will begin.

We are going to take out of order Mr. Monday, if you'd come on up first. Then we thought we could discourage other people from wanting to come up at all. This is how we thin out the agenda.

[Laughter.]

SENATOR PRESLEY: Mr. Chairman, I'm his assistant, Mr. Monday's assistant.

[Laughter.]

CHAIRMAN PERATA: Would you like to do your job now?

SENATOR PRESLEY: I'm not qualified, but I just wanted to take a few minutes and present Mr. Monday to you.

CHAIRMAN PERATA: Not everybody knows who you are.

SENATOR PRESLEY: Oh, I'm sorry.

Bob Presley, former member of this body.

John and I go way back, maybe too far. I've known him since he was in Corrections, and I was Chairman of the Prison Committee here. And we worked on a number of prison matters at that time.

Then later on, Governor Wilson appointed me Chairman of the Youthful Offender Parole Board, and John came over as the Executive Officer. Then later, as Secretary of the Agency, John worked with me on a number of issues and a number of pieces of legislation that I think were good.

1 So, during that all period of time, it was my
2 observation that he was about as qualified a person that I've
3 ever met in state government.

4 I have to apologize for my allergies.

5 But he would be, in my opinion, one of the best
6 qualified people in the state for this particular position. And
7 I thought I'd take a few minutes and convey that to you.

8 CHAIRMAN PERATA: Thank you very much.

9 SENATOR PRESLEY: Thank you for your time.

10 CHAIRMAN PERATA: Good choice as an assistant.

11 [Laughter.]

12 MR. MONDAY: Thank you, Senator.

13 CHAIRMAN PERATA: We will not be offended if you
14 leave.

15 SENATOR PRESLEY: Thank you.

16 CHAIRMAN PERATA: I know how it is.

17 Mr. Monday.

18 MR. MONDAY: Good afternoon, Senator.

19 I appreciate the opportunity to come here today,
20 Senator Perata, and Vice Chair Ashburn, Senate Committee Members
21 Cedillo, Dutton, and Padilla. I appreciate the opportunity to
22 address your questions regarding my candidacy and qualifications
23 for this position.

24 I'm a 39-year career public servant, beginning at
25 age 17, when I enlisted in U.S. Navy, and continuously since
26 then, beginning in 1973, as an up-through-the-ranks civil
27 servant. I started as basic clerk in state service in 1973,
28 worked up through the ranks.

1 I've had several appointive and executive
2 managerial positions along the way, rising to what I consider
3 the pinnacle of my career, here before you today, where I've had
4 the honor since last August to serve the people of California as
5 an appointee of Governor Schwarzenegger as the Executive Officer
6 of the Board of Parole Hearings.

7 I represent before you today over 500 Parole
8 Board staff, and 11 appointed Commissioners, two of whom you
9 will examine here today, whose devotion to public safety,
10 parolee-inmate rights, and victims' rights are worthy of the
11 highest praise.

12 I'd not be able to provide you today the
13 accounting of the achievements and successes that I hope to
14 share with you today -- and the process remedies we've put in
15 place are some of the issues that are going to come up today --
16 without the dedication and hard work of the staff of the Board
17 and the collateral support of the executive members of the
18 California Department of Corrections and Rehabilitation.

19 I'm humbled and honored with an outpouring of
20 support from a wide cross-section of constituency and
21 stakeholder groups that know who I am, that know what I believe
22 in, and my vision for a better Parole Board in the future.

23 Mr. Chair, I stand ready to answer any questions
24 you may have.

25 CHAIRMAN PERATA: Thank you.

26 Do you have any family here, because they can be
27 introduced, and then they can leave?

28 [Laughter.]

1 MR. MONDAY: No, Senator. My family doesn't like
2 to see me bleed.

3 [Laughter.]

4 CHAIRMAN PERATA: First of all, you're the first
5 Executive Officer of the Board that we've had the privilege of
6 confirming. That's due to the re-org, so it's nice to have you
7 with us.

8 This has been an area for the time that I've been
9 Chairing, and a couple of Members who have been here, have been
10 on this, where there's been a high degree of interest, generally
11 in rehabilitation because the Governor had made a point of
12 putting the "R" in the Department of Corrections. The only way
13 that becomes more than a word is in its implementation.

14 We had been concerned over the last couple of
15 years about the number of hearings that had resulted in
16 postponements.

17 You've done better. There's still about one in
18 three, and most of them occur on the day of.

19 We've heard the answers given why that's the
20 case. Candidly, I can see that as the exception, not the rule.
21 When you're around 35 percent, it's close to the rule. And it's
22 just very hard on both the victims and the next of kin to come
23 to some place, and then have it 86'd.

24 We've had an abiding concern about training, and
25 I think you've made some demonstrated steps forward. You've got
26 a new process for psych evaluations, which I'd be interested in
27 exploring with you.

28 But generally speaking, you know, we see your job

1 administratively as being able to put the punch in the throw.
2 If we're going to have rehabilitation, then we ought to have it.
3 And it's going to get done under the stewardship of people like
4 you.

5 I think 39 years in public service, no one could
6 ever challenge your commitment to the cause.

7 You happen to be in a place where I think you've
8 got a really tough job to do, but what we have is a state of
9 great opportunity. We have a system that, arguably or
10 unarguably, no one believes is working. So, everybody that can
11 do better will make it improve.

12 You have a couple people behind you today for
13 confirmation that share that responsibility, but you'll set the
14 tone, as a good executive should.

15 With that, I'd just like to go down the list, and
16 then we have Members to chime in.

17 How do you assess why we're cancelling still a
18 third, or postponing a third of the hearings.

19 MR. MONDAY: Senator, that -- that number is
20 accurate as to all the information that you'd asked for coming
21 into this hearing and enduring for some period of time.

22 We have turned the corner a little bit more with
23 more current information that you don't have in front of you.
24 The recent statistics from May kind of bear that out. And I'm
25 glad to bring that forward today, that 35 percent, or whatever
26 that it's been running, we're down around less than 30 percent
27 now, which may be in some people's vision isn't a remarkable
28 change, but in the world of the Titanic trying to turn, this is,

1 we feel, pretty excited about that.

2 We have lots of things in place, and other things
3 that are yet coming on, to do exactly that. There's a new
4 cooperation -- and maybe "new" is an overstatement, but I'll
5 stay by it -- with Jim Tilton and Scott Kernan from CDCR exec.
6 They get it now.

7 I don't think there for a while people were
8 getting it, how essential those staff resources that are at the
9 institutions what work with us -- they're called the Board Desk,
10 but they are not truly Board employees. They're CDCR employees
11 whose job it is to do those case packets and send them out to
12 all the stakeholders in the hearing, whether it's the DAs, or
13 the public defenders, the Commissioners coming up into the
14 hearing. Very important that those be done correctly and fully.

15 And when the Commissioner gets those, often times
16 theirs may be bereft of some documents, but they feel they can
17 catch up when they get to the institution and find that, and
18 feel that they can get ready to go for the hearing.

19 There are certain laws and regulations as to the
20 amount of time the defense bar and the DA gets to prepare for
21 their case. And if that document is missing in their packet, we
22 won't know that until the morning of the hearing, and then we
23 found out that they didn't get something.

24 It's not uncommon, or hasn't been uncommon, we're
25 fixing that, that four stakeholders in that -- that hearing on
26 that day all got the same packet with the same guy's name on it,
27 hopefully. And that might even be an error once in a while.
28 But all four of them are different. Each one's bereft of some

1 different missing document.

2 And then there may be a proposal made on the
3 agenda, "Mr. Commissioner, we can't go forward 'cause we did not
4 have the psych evaluation in our packet in order to study it and
5 prepare our client to go forward." And that's why a lot of
6 postpones happen the day of.

7 Something that we're doing to fix that, and we're
8 real excited for this -- and hopefully in the future, an
9 opportunity to meet with you and any of you that might want to
10 ask -- the Lifer Scheduling and Tracking System is an electronic
11 processing, that all this -- all this information from the
12 packets are going to be in real time in a system that we can
13 look at and see if John Smith, a life inmate, if all these
14 documents are in the file, and have been done timely, and have
15 been expressed to all the stakeholders.

16 Mr. Wattley, who's in the office today, is
17 plaintiff in the Rutherford Lugo lawsuit that is compelling the
18 Board to be timely in its hearings. Imagine that.

19 We have not been, and we're working towards that.

20 But some of that timeliness is, if we have to
21 keep redoing hearings because they're postponing -- and you're
22 very apt to say that, Senator -- we're disadvantaging the
23 victims, victims' next of kin that are showing up at these
24 hearings, everybody that shows up, when we have to postpone.

25 It's not what we want to do, and it's not that I
26 want to do this hearing over again another time. I've already
27 got a backlog. I don't need to be hearing two and three times
28 the same case to get it right.

1 This LSTS, L-S-T-S, the Lifer Scheduling and
2 Tracking System, is going to provide us 60 to 90 days out
3 information as to: Are all the packets done right, and
4 delivered; and are the psych evals done; are the case reports
5 done; are all the essential documents that are on the check list
6 for that Board Desk staff that I was talking about.

7 But we believe -- part of my strong belief, when
8 we went to the re-org and increased this Board from nine
9 Commissioners to twelve, and often times there were vacancies,
10 so that even that nine was maybe six at best case out there. We
11 have eleven out there today.

12 As you know, the re-org also changed the casts of
13 the Chair and the -- and the Executive Officer, and went from a
14 mayor-city manager model to the city manager-mayor model, so
15 that the Chair is out there 85 percent of the time doing
16 hearings, so that we could get to the backlog and continue to do
17 cases current.

18 LSTS will allows us to do that much more
19 efficiently, because we will know if there's a potential
20 postpone, and we can fix that case before we get there that day.
21 Or, we will postpone it well before all the people have to
22 assemble there, and maybe possibly be able to reach in and get a
23 different case, and get consensus of all the participants
24 because there's timeframe issues. But we may be able to get
25 waivers to get somebody else's case in there.

26 CHAIRMAN PERATA: That's the first coherent
27 answer I've heard. Thank you.

28 I want to caution you on your candor, though.

1 You don't want to be too candid about what's going on.

2 [Laughter.]

3 MR. MONDAY: There are people in the room,
4 Senator, that told me to shut up and make you ask me questions,
5 but that one I felt needed a full answer.

6 CHAIRMAN PERATA: That's fine. Bad advice.

7 You don't ever want to answer a question that we
8 haven't asked, but your counsel will learn that next time.

9 [Laughter.]

10 CHAIRMAN PERATA: On the psych evaluations, I
11 guess the first couple we had, we talked last year about them
12 being over five years old.

13 Where are we right now? If you had to take an
14 average, how current are they?

15 MR. MONDAY: We're pretty excited about two
16 things. The quality of them, and I was very worried working
17 this week with two of the Commissioners, the two that you're
18 going to examine later, I hadn't gotten a lot of direct feedback
19 as to the quality of them. I knew of them, looking at them
20 myself -- you know it when you see it -- but it's nice to know
21 from the practitioners. And Commissioners Martinez and Eng were
22 effusive in the new model.

23 It's a very, very well done psych report. It
24 takes longer to interview the inmate to get that quality of
25 psych report, but we're very committed to doing it right and
26 doing it well with the current science.

27 The issue of the five-year, and that has come up,
28 and it's a continuing debate, and probably will be debated for

1 some time yet to come.

2 We made a determination early on. I mean, I'm
3 not a -- I'm not a clinician, so I -- but I knew what we wanted.
4 We wanted the best psych eval format that the industry has now,
5 and I believe we have that.

6 We wanted the best risk assessment instruments
7 that the industry has. And there I'm told there are some 45
8 risk assessment instruments out there. So, 45 professors of
9 whoever came up with that risk assessment instrument will tell
10 you theirs is the best.

11 We put a bunch of clinicians, very world-renown
12 clinicians, in a room together and told them, "We want one
13 instrument, whatever that is. And we want a consensus of
14 whatever the best risk -- violence risk assessment instrument
15 for the California lifer population." And there isn't a single
16 one of those 45 that's been validated on the California lifer
17 population. So, we were trying to find the one nearest to it,
18 and do -- and research the heck out of that one as we implement
19 it.

20 The clinicians, not surprisingly, couldn't come
21 up with one. They came up with two. And actually, it's two
22 with another one attached to one of them. But we said, "Okay,
23 two is going to work."

24 And we went about, with the help of this
25 Legislature and the administration last year, we were provided
26 clinical resources attached to the Board to do lifer psych
27 evaluations only.

28 Previous to that, CDCR's overburdened mental

1 health operation, they've got the Coleman lawsuit now that
2 they're trying to address, as well as doing the psych evals for
3 the lifer population. A lot of the postpones that you will see,
4 and if you can look month after month after month, where psych
5 eval's not done, just undone, or done poorly, or not addressing
6 the issue that the previous Commission had asked them to
7 address.

8 The new unit was implemented last July
9 budgetarily, and then of course, we all competed for those
10 psychological resources, whether it was the Coleman CDCR,
11 whether it was DMH, whether it was our new unit, everybody's
12 trying to recruit the same clinical resources.

13 We were blessed to be able to get some of the
14 finest in -- I guess some people wanted to see and work in this
15 new environment and create something new. Dr. Jasmine Tehrani
16 is here today, one of our senior psychologists, heavily
17 accredited, as is Dr. Steven Walker, the other senior
18 psychologist who participated in hiring all the staff
19 psychologists: 17 positions, 2 seniors, 19 the total.

20 We took them through an accreditation process, a
21 certification process on these instruments that I mentioned, so
22 they would be certified. The professors that put those out
23 actually put you through a training program in order to certify
24 you in giving the instrument, and assessing the instrument, and
25 scoring the instrument.

26 So, they went through all of that to where it
27 ended up being May, just two months ago or last month -- it's
28 still June, I assume -- where we implemented --

1 CHAIRMAN PERATA: Unless you talk too much, and
2 then it'll be July.

3 [Laughter.]

4 MR. MONDAY: We implemented May 1st, Senator.
5 And they've been doing these prospectively May 1st.

6 Now obviously, some of the psych evals, hundreds
7 of them, are still in play. They can't do all of them in May.

8 CHAIRMAN PERATA: I think we budgeted for 5,000 a
9 year. Can you do that?

10 MR. MONDAY: We're finding out whether we can or
11 not, Senator.

12 One of the things we have to -- and we have some
13 pretty good experience now -- how long these are going to take.
14 Nobody could really guesstimate that, and to access the
15 institution and get to the inmate. So, we're coming up with
16 some numbers now.

17 The early answer back to you, I don't think we
18 have enough. My staff have told me, "Mr. Monday, we don't think
19 we have enough."

20 And I said, "Well, get me the numbers, and we
21 will certainly put that in the documents that are necessary to
22 petition for additional resources."

23 CHAIRMAN PERATA: Your turn.

24 SENATOR PADILLA: I want to come back to the
25 psych evals in a minute, but one of the items that was brought
26 to my attention after reviewing the documents deals with the
27 privacy of the deliberations between Board members and deputy
28 commissioners.

1 I think you know what I'm talking about, so I'll
2 give you the first crack at explaining what's going on, and
3 what's being done about it? It obviously causes great concern.

4 MR. MONDAY: Senator, without violating any
5 covenants of personnel issues that may still emanate from that
6 particular issue, I will deal with it generally.

7 At a certain point in the hearing, when all the
8 information is presented and the Commission now is going to
9 adjourn to deliberate, make a determination of what they do with
10 this particular case, they clear the room, or they exit to
11 another room that's empty, and deliberate in private, off the
12 record. There is no record kept. They argue back and forth or
13 come up to a consensus, whatever it may be, again in private.

14 In a particular instance about a year ago -- we
15 do some video conference hearings -- and so a remote county,
16 maybe by video conference, had the victim there. And it was an
17 imposition or a hardship for the victim or victim's next of kin
18 to travel. So, we do a video conference hearing for their
19 portion of the hearing.

20 The Commissioner is present at the hearing. The
21 inmate's present at the hearing. But the District Attorney and
22 the victim's next of kin may be at distance.

23 In this particular case during that day in
24 question, there was a video conference hearing. And that
25 hearing was partially concluded. The decision was not rendered
26 yet. It was going to be rendered the next day.

27 The Commission then reconvened on another case,
28 turned off the video broadcast to that remote county. They

1 turned video off; they did not -- they were not aware they did
2 not turn off the sound.

3 Later on in the day in this next case, they went
4 into deliberation again and cleared the room, and deliberated on
5 that particular case. And the sound was still open to the
6 distant county. And the county overheard words that they felt
7 may suggest that the hearings were based on issues other than
8 public safety and inmate due process on that particular day.

9 SENATOR PADILLA: The reason I raise it, and I
10 understand there's at least two cases, not just the one, but the
11 reason I raise it is, in your responses to the Committee's
12 questionnaire, you were asked whose responsibility is it. And
13 your response was the Commissioner of record.

14 I've had a chance to talk with a couple of them
15 now. I know they travel quite a bit. There are tremendous
16 workloads. The hearings themselves are lengthy, draining, and
17 they go home late and prepare for the next day.

18 It seems to me the last thing you ought to be
19 expecting of them is to know which button's to be pushed at
20 which time. I've got to believe there's technical staff that's
21 responsible for that.

22 Yet your response to this Committee was, it's the
23 Commissioner of record responsibility to turn mikes on and off.

24 MR. MONDAY: Senator, the Commissioner of record
25 is the Chair of the hearings on that day. They are in tandem
26 typically with the deputy commissioner, who's also a hearing
27 officer, a Civil Service hearing officer.

28 The deputy commissioner is typically the one who

1 runs the machines, if you will, whether it's the digital tape
2 recording equipment, whether it's securing the video
3 conference. There are staff from the institutions that are much
4 more adept than us at plugging in wires and things.

5 When I say in my response that it's the
6 responsibility of the Chair of the day, virtually all the issues
7 of the hearing there are the responsibility of the Chair of the
8 day.

9 And that's not to shirk my responsibility as the
10 Executive Officer. I bear final responsibility for whatever my
11 Commission does in eleven hearing sites every day, five days a
12 week.

13 SENATOR PADILLA: I'm glad to hear you say that,
14 because that's my interpretation different than what I read in
15 your responses.

16 MR. MONDAY: And I didn't mean to mislead you
17 with that response. I mean, I bear certain final
18 responsibility.

19 Now, I did -- subsequent to this event going
20 sideways the way it did, there was some question as to, does the
21 county of record that overheard have a responsibility?

22 I would certainly expect that any county, anyone,
23 whether it's county or anyone else, any of us in this room,
24 overhear a conversation electronically that we should not be
25 hearing would tell somebody. That didn't happen in this
26 particular case, apparently. Or more than apparently; it did
27 not happen. And the issues that were --

28 SENATOR PADILLA: I appreciate that.

1 I want to sort of come back to your statement,
2 that final responsibility lies with you.

3 MR. MONDAY: Absolutely.

4 SENATOR PADILLA: That being said, do you want to
5 discuss the existing policy, or lack there of, or protocols, or
6 lack there of, or recommended changes to policies or protocols
7 to ensure this doesn't happen again?

8 MR. MONDAY: And we have done that, yes.

9 SENATOR PADILLA: What have you done to make sure
10 this doesn't happen again?

11 MR. MONDAY: We've put out -- number one, we met
12 with the Commission to let them know what occurred. And that's
13 part of the training they get even initially, that everything
14 that you say may be overheard. Ensure that the record is
15 secured.

16 We've put a memo out to all the stakeholders that
17 use the video conference equipment, whether it's the county DAs,
18 or whether it's our staff, as to what the protocols are, and the
19 appropriate process for using that equipment.

20 SENATOR PADILLA: So, it's clear on site at the
21 hearing that responsibility's been assigned to an individual?

22 MR. MONDAY: Not an individual, other than the
23 Chair of the hearing, as I stated before.

24 I hear what you're suggesting is maybe we ought
25 to task that elsewhere. And that's something certainly we can
26 take up with CDCR, who would be the on site individuals with
27 that equipment.

28 SENATOR PADILLA: And as you do, consider that

1 internally and possibly change policies and practices. I look
2 to hear back from you --

3 MR. MONDAY: Absolutely, Senator.

4 SENATOR PADILLA: -- when those things happen.

5 Same question in regards to workload. I
6 mentioned I'm certainly sensitive to the workload and the
7 pressures that the hearing officers are under.

8 In your opinion, does the workload itself -- the
9 volume of cases, the length of cases, the complexity of cases --
10 compromise the integrity of the hearing process itself?

11 MR. MONDAY: Typically I would say no, but what
12 we have seen -- and we have a workload study that you've seen in
13 some of the responses going to look at exactly that, Senator.

14 In years past with the Board of Prison Terms, we
15 did 21 cases a week. We've done as few as eight cases a week
16 way back years past.

17 Right now, we're doing 16 cases: 2 on Mondays
18 and Fridays, and 4 during the week would be a full week. And
19 what we're finding with the current Board, with the current
20 things we're looking at, that there has been an increase in the
21 amount of time it takes to do a fair, fully functioning lifer
22 hearing, to about the current -- and I don't know what the
23 report will finally say, but it's kind of an internal discussion
24 I've had with the people that are doing the study -- that it
25 looks like two-and-a-half hours on average.

26 If we're doing four, that's ten hours. And
27 that's the hearing process.

28 There are delays sometimes in presenting the

1 inmate ready for hearing, whether they're way across the yard,
2 or there's count, or whatever there may be going on.

3 So, we're becoming very cognizant that the 16-
4 case model may need a significant review.

5 SENATOR PADILLA: And I'll ask further questions
6 of the Commissioners later in the agenda, but just know that's
7 of grave concern to me as well: the workload pressures; the
8 time constraints; whether there's proper information in front of
9 them or not; given raw, physical fatigue to the information
10 before them; and how the hearings themselves are conducted.

11 Anything that compromises the fairness of the
12 hearing obviously compromises the integrity of this process.

13 MR. MONDAY: And Senator, not to miss that point,
14 we're -- we've been vigilant, I believe, to make sure that the
15 Commissioners are not -- and I haven't heard directly that
16 they're compromising hearings because of the fatigue factor.
17 But we do know just the wear and tear on the individuals.

18 This is extraordinarily arduous job that we ask
19 these Commissioners to do.

20 SENATOR PADILLA: Final point, just to echo some
21 of the Pro Tem's concerns and questions about psychological
22 evaluations.

23 We began to discuss sort of the regularity or the
24 frequency of the evaluations that are done for the inmates, and
25 the inconsistency there is between new evaluations being done
26 and hearings when they come up for consideration.

27 You know, if we're going to have a new hearing,
28 we ought to have updated evaluations, it would seem to me, if

1 we're trying to assess whether an inmate has made progress or
2 not. It's kind of hard to go two years, but with no new
3 evaluation, psychological evaluation, we're not getting the
4 whole new picture.

5 So, we either need to adjust frequency of the
6 hearing, or the frequency of evaluations to call them better in
7 line.

8 Would you agree?

9 MR. MONDAY: Well, Senator, one of the things we
10 -- with the psychological evaluation by a licensed clinician is
11 to determine the -- the inmate's mental health abilities to
12 function in the setting, their mental health abilities to make
13 assessments of right or wrong as to their prior criminality and
14 their future conformance. That is very important.

15 We are told, and early on in this process with
16 the new Psych Eval Unit, one of the questions we asked was not
17 only what instruments are the best to use, but the frequency:
18 How frequent do we need to have psych evals in order to do that
19 well and correct?

20 The science so far has told us -- and it's an
21 open debate and we're still welcome to that -- is five years.
22 That an individual that does not have a mental health issue,
23 when they've done the clinical eval, will not substantially --
24 their mental health status will not substantially alter in a
25 less than five-year period.

26 The issues that do change are their degree of
27 programing. Did they achieve an educational attainment? Did
28 they achieve a program element? Did they get a skill? Did they

1 get a certificate? And those things are at every hearing in the
2 case report by the counsellors that are leading them.

3 They -- they may be in that initial psych eval,
4 because that's what the inmate said, "I've got this education.
5 I've got these program skills."

6 But you really don't need a clinician to tell us
7 what educational attainments they need. You need a clinician to
8 tell us what his mental health status is. And the science right
9 now --

10 SENATOR PADILLA: Are you suggesting to me then
11 that an inmate who can go through the educational program, or a
12 job training program, or other required programs, when he would
13 come up for a new hearing two, three, four years later, without
14 a new and improved psychological evaluation, is going to get the
15 benefit of the doubt?

16 MR. MONDAY: Well, they're going to have a
17 psychological evaluation that's going to tell us what their
18 mental health status is, and their predilection to future
19 conformance.

20 They're going to have an updated case report at
21 every hearing. And the case report --

22 SENATOR PADILLA: The case report minus an
23 updated psychological evaluation.

24 MR. MONDAY: Again, in answer to your question,
25 that's correct. The science tells us that the psychological
26 portion of the evaluation will not alter within that five-year
27 period for an individual that does not have a mental health
28 challenge. If they have a --

1 SENATOR PADILLA: Even though they've
2 demonstrated the discipline, the desire to go through a program
3 for self-improvement, maybe some treatment, mental or otherwise,
4 but for lack of a new psychological evaluation it would seem to
5 me they're not getting the fairest hearing possible two, three,
6 four years later.

7 MR. MONDAY: And I hear what you're saying, and
8 I've held that belief as well. But the science tells us that
9 that's not -- that's not true. That the mental health --

10 SENATOR PADILLA: What does practice tell us?

11 MR. MONDAY: Pardon?

12 SENATOR PADILLA: What does practice tell us?

13 MR. MONDAY: And practice tells us --

14 SENATOR PADILLA: And I appreciate scientific
15 studies. I went to engineering school, and I get that.

16 But in practice sometimes things are just a
17 little bit different than what academics and researchers would
18 suggest.

19 MR. MONDAY: Well, two things, Senator.

20 We're told also by the science more frequent
21 evaluations wouldn't render any difference, but for --

22 SENATOR PADILLA: What does practice tell us?
23 Not research; not science. What does practice tell us.

24 MR. MONDAY: And practice tells us virtually the
25 same thing, that a psych eval that we got from last year is
26 going to be remarkably similar to a psych eval this year, but
27 for a different clinician.

28 And some of the issue is if, as my staff were

1 telling me, the 17 or 19 staff that we have now are going to
2 have a hard -- be hard-pressed to do the 5,000. And that was
3 predicated on some distance between psych evals. And if we're
4 going to do them more frequently, we're going to need a whole
5 bunch more.

6 SENATOR PADILLA: And you're telling me that
7 we've concluded this. But is it anecdotally? Or, do we have
8 some sort of data collection system, some sort of psych
9 evaluation tracking system, with a sufficient pool of inmates
10 over X amount of time, that leads us to rely on our own science,
11 not just something we read in a magazine?

12 MR. MONDAY: And a very good question, and thank
13 you, Senator.

14 We do have a research component to everything
15 we're doing right now. With the new Psychological Evaluation
16 Unit launching May 1st, we are -- we have a research component,
17 ongoing, that point exactly.

18 SENATOR PADILLO: So, we're just starting?

19 MR. MONDAY: Yes, sir.

20 SENATOR PADILLO: Thank you, Mr. Chair.

21 SENATOR ASHBURN: One of the things I've been
22 concerned about are lines of authority between the Department of
23 Corrections, your office, the Board that conducts the hearings,
24 makes their recommendations, the support staff to you, the
25 support staff for the Board.

26 So, for a minute I want to ask you about those
27 relationships. We've spent a lot of time talking about
28 psychological evaluations. And so, there was a problem: the

1 timeliness, the quality, lack of paperwork in the file,
2 postponements, and that sort of thing.

3 So, what steps did you take to change the process
4 with respect to psychological evaluations?

5 MR. MONDAY: Again, Senator, that -- that change
6 was -- we realized that it was not going to be able -- that
7 function was not going to be able to be carried out by CDCR, if
8 only because they were tied into the Coleman lawsuit, and there
9 just was not enough staff to do hat.

10 So, we did a Budget Change Proposal a year ago.
11 Asked the Governor's Office for support on that. Received that,
12 and brought that to the Legislature and asked for a separate
13 unit, staffed of psychologists, to do exactly that function and
14 that function only. As well as to do it independent of the
15 institution, so that the treating clinician, that is still in
16 the institution is treating the inmates on an ongoing basis, are
17 not also the evaluative clinicians.

18 So, from a psychological model, our science tells
19 us that was a bad model in the beginning.

20 So, we do have that separate and independent
21 psych eval being done now.

22 SENATOR ASHBURN: So, with respect to
23 psychological evaluations, that's been pulled out of the
24 department. It's now a function of your office and of the
25 Board.

26 Now, tell me about attorneys. Where do you and
27 where does the Board get the legal help that is necessary in
28 properly preparing the packets or otherwise advising the

1 Board?

2 MR. MONDAY: The attorney staff that work with
3 the Board are part of CDCR. They're in the Office of Legal
4 Affairs. All attorneys report to CDCR Office of Legal Affairs.

5 There is a body of attorneys that are tasked to
6 the Board. They actually reside in our spaces at the Board, and
7 are there for -- to assist us in all the hearing processes where
8 there are revocational or lifer hearing processes.

9 They do report to someone else, but they're
10 functionally attached to us. I still call the head of that
11 operation, Anna Awiszus, our chief counsel, even though that's
12 really not the title any more. That was a title that preceded
13 before the re-org.

14 SENATOR ASHBURN: What work do those attorneys do
15 for you and for the Board?

16 MR. MONDAY: On an ongoing basis, we instituted
17 something just within this last year, Senator, where when
18 hearings are going on, potentially eleven everyday -- there's
19 probably nine going on today because two of the eleven are here
20 today -- there may be an issue that comes up, a legal question
21 within the context of the hearing that is aside from the
22 training that the Commissioners received, or it's just a wrinkle
23 off. They don't know how to answer that.

24 They can take an executive session and call one
25 of our legal staff, one of this legal staff I mentioned, on a
26 Blackberry. There's a Duty Attorney with the Duty Blackberry
27 number every day available to the Commission.

28 The rest of the staff are working on any number

1 of legal issues: habeas cases; issues from the Attorney
2 General's Office; issues of review of grants and denials that we
3 have before us with the Board.

4 All the grants, of course, go forward to the
5 Governor's Office, so they need to be evaluated as they're sent
6 over to the Governor's Office.

7 A decision review process. I'm here before you
8 to tell you the decision review process is -- of denials is a
9 work in progress, as we've mentioned in our meetings previous.
10 And one of the things we have going forward is a BCP through the
11 Office of Legal Affairs, with my full support, to actually get
12 more legal staff to do that decision review process. It's so
13 essential to knowing, from a monitoring perspective, how all the
14 Commission is doing.

15 SENATOR ASHBURN: Are the attorneys involved in
16 the preparation of the files that go to the Commissioners?

17 MR. MONDAY: No, they are not.

18 SENATOR ASHBURN: When you and I were discussing
19 this a day or so ago, we talked about, in essence, an executive
20 summary of what can be a very, very voluminous document; you
21 know, all the documentation related to an individual inmate.

22 So, who prepares that executive summary? That
23 becomes an issue, as I understood our conversation, from time to
24 time in its timeliness, the adequacy of the material contained
25 in there, the consistency of the documents among all the parties
26 that are entitled to them in preparation for a hearing.

27 MR. MONDAY: That -- that document is called a
28 lot of names. Executive summary is a better name than packet,

1 but it's called case packet.

2 But it is an executive summary from the -- from
3 the C File, the correctional file of the inmates, which
4 oftentimes they're that thick, or sometimes it's three times
5 that thick and comes in a box.

6 There are prescriptive pieces of that -- the
7 psych eval, the case report -- that are made part of that
8 executive summary. And the prescription is actually a check
9 list of that staff at the institution, and their clerical and
10 analytical staff, Senator, not legal staff. But there's a
11 prescription in this -- in the C File, there's this piece, that
12 needs to be in the file. This needs to be in the file. And
13 that's what we're relying on.

14 Some of that is not working as well as it had
15 ought, and that was some of the conversation I had with Senator
16 Perata earlier.

17 When it doesn't go well, four of us are supposed
18 to get this packet, and four different packets show up to four
19 different individuals. And we don't even know that until we get
20 together at the hearing, that these packets are -- mine's got
21 everything; yours has half of it; Bill's has only a piece of it.
22 Then we have to postpone.

23 So, that's -- that's something we're trying to
24 fix with this LSTS, the Lifer Scheduling and Tracking System, to
25 give us way advance warning.

26 Another part of the lawsuit that I was talking
27 about is, we're going to be doing these packet preparations 60
28 days out, instead of 30 days out now, to give ourselves an

1 opportunity to make sure that that's done correctly.

2 SENATOR ASHBURN: Let me go back to the legal, to
3 the attorneys that assist you and assist the Board.

4 Is there the potential for a conflict for an
5 attorney who is staffed to the Department of Corrections and
6 Rehabilitation also staffing and advising the Commissioners or
7 you, in your independent function -- I view it as an independent
8 function -- of evaluation for parole?

9 MR. MONDAY: Not being an attorney, I would just
10 answer that, that certainly there could be an inherent conflict
11 if one -- if the Mother Ship is going in one direction, and
12 these attorneys are going in the other.

13 I would hope that the attorneys that are tasked
14 to the Board in their responsibility as members of the Bar, I'm
15 their client, and that they would hold to the needs of the
16 client.

17 SENATOR ASHBURN: Let me ask it another way.

18 Do you want those attorneys pulled out of the
19 Department of Corrections and reassigned under the Executive
20 Officer to the Board of Parole?

21 MR. MONDAY: Senator, you're asking me some tough
22 questions.

23 SENATOR ASHBURN: That's why we're both here.

24 [Laughter.]

25 MR. MONDAY: That issue, obviously re-org
26 suggested something otherwise. We are continuing to look at
27 issues of the re-org like this issue. Is this working? Is this
28 the best model?

1 We haven't arrived -- I've been here since August
2 in this role. We haven't arrived at a conclusion where we want
3 to change the whole cast of the re-org.

4 But there are significant issues of the re-org
5 that we are looking at, and I've got sensitive ears throughout
6 the system, kind of helping us arrive at some of those
7 conclusions. There may be some issues that need to be fixed
8 yet, and this may be one of those.

9 SENATOR ASHBURN: Let me ask you maybe even a
10 tougher question, and that is your own role in relationship to
11 the Board.

12 You are an independently appointed director of a
13 department. Yet, you have a Board that is also independently
14 appointed and confirmed to their role. Your job is to serve
15 that Board.

16 MR. MONDAY: Yes, sir.

17 SENATOR ASHBURN: Is it desirable for you to be a
18 direct employee of the Board?

19 MR. MONDAY: I do not understand the question.
20 As opposed to --

21 SENATOR ASHBURN: As opposed to the way it is
22 today, would it be more desirable to make you directly
23 accountable -- not you individually personally, but your role --
24 to have the role in the office that you fill you as the
25 Executive Officer to the Board itself?

26 MR. MONDAY: Again, that model, Senator -- there
27 was a different model previously, where the Chair was the mayor,
28 if you will, and the Executive Officer was the city manager.

1 That changed with the re-org, and gave the city
2 manager or the Executive Officer the day-to-day administrative
3 authority over Board for budgets, and personnel, and hiring, and
4 tasking staff to carry out the mission of the Commissioners to
5 make sure that the Commissioners that are out there hearing
6 cases everyday have all the resources and abilities to do that
7 function, including the training of them, not only initially,
8 but on an ongoing basis.

9 I think the model is working fairly well.

10 SENATOR ASHBURN: And it may be.

11 But the job that we're doing here is a hearing
12 conducted, affecting the life of each of these individual
13 inmates. And the person that's going to be held accountable for
14 that is going to be a Commissioner.

15 Your job, as I interpret it, is a support job to
16 the Commission.

17 And I wonder how we can have an arrangement where
18 we hold the Board and the Commissioners that make up that Board
19 accountable and responsible, and yet the support staff is
20 separate and independent from that Board.

21 And I'm asking you to speculate and to give your
22 opinion, because this was created by the Legislature, after all,
23 which I think by definition makes it imprecise.

24 [Laughter.]

25 SENATOR ASHBURN: If we can create it this way,
26 we can change it.

27 And hopefully, in making the changes that we like
28 to make around here -- I mean, we do make changes around here --

1 that we would improve things. That's why I offered the
2 opportunity for you to comment with respect to the relationship
3 of the attorneys that are employees of the Department of
4 Corrections.

5 It seems to me that the Board of Prison Terms,
6 Board of Parole, ought to have its own attorneys. I don't think
7 there ought to be even the appearance of a potential conflict
8 between those who house the inmates and those who independently
9 evaluate for release.

10 And similarly, I think that the Executive Officer
11 ought to report the people that we ultimately hold accountable
12 for the decisions on granting or denying, and that would be your
13 Board.

14 CHAIRMAN PERATA: Before you answer, I'd just
15 advise you that the Governor designed this. So, you may want to
16 moderate what you say.

17 MR. MONDAY: I'm trying, Senator.

18 [Laughter.]

19 SENATOR ASHBURN: But we voted on it.

20 CHAIRMAN PERATA: Yes, we did.

21 And we do not make mistakes.

22 [Laughter.]

23 SENATOR ASHBURN: That we admit very often.

24 If you don't have any further comment on that,
25 that's fine and acceptable.

26 I think you're doing a very good job.

27 I am concerned about lines of authority. And I'd
28 ask you to think about the things that I've raised.

1 MR. MONDAY: Thank you, Senator.

2 CHAIRMAN PERATA: I'd like to talk a little bit
3 about parole revocation.

4 You have jurisdiction over all the deputy
5 commissioners?

6 MR. MONDAY: Yes, sir.

7 CHAIRMAN PERATA: You've done 80,000 hearings,
8 probable cause hearings, and 17,000 parole revocation hearings.

9 Distinguish the two? What is the difference
10 between a probable cause and a revocation?

11 MR. MONDAY: Just as quickly as I can, Senator.

12 A parolee in the community has allegedly violated
13 parole. Charges are brought up by the parole authority, field
14 paroles, and they're alleging something occurred.

15 We make an initial determination whether the
16 parolee needs to be held in custody while we evaluate what those
17 are.

18 Within ten days of that hold, there's a probable
19 cause hearing where we evaluate the police reports, if there are
20 such, the parole reports. And the inmate and their counsel are
21 present, along with the deputy commissioner.

22 A probable cause hearing finding is made whether
23 or not it's probable to believe any or all of those charges are
24 true at a probable cause level of proof.

25 It follows thereafter that if they're probably
26 true, the deputy commissioner has matrix, Senator, of sanctions.
27 And we'd apply that matrix of sanctions and present that to the
28 inmate and their counsel: if they wish to accept that probable

1 cause finding and the matrix sanction that follows.

2 If they do -- and 80,000 of those come forward,
3 Senator -- if they do accept that, then their parole is revoked
4 for that period of time, and they're moved off to serve that
5 revocation time.

6 Those that do not, and 17,000 of those 80,000
7 choose to reject the plea bargain, if you will, and deny the
8 charges. And within 35 days of their hold and arrest, they have
9 a full evidentiary parole revocation hearing. It's an
10 administrative proceeding at a preponderance level of proof,
11 with the witnesses and evidence presented.

12 And that's -- and then at that hearing they can
13 either be found not held liable for those charges, found liable
14 for those charges, and whether parole needs to be revoked, or a
15 remedial sanction applied where they may be continued on parole
16 with electronic monitoring, or more frequent drug testing, or
17 whatever it might be.

18 CHAIRMAN PERATA: You explained it very well.
19 What's your assessment of the way the system
20 works?

21 MR. MONDAY: It's working very, very well.

22 This was the Valdivia lawsuit, you might recall,
23 from a few years back. We worked with the court, the federal
24 court, to implac[e] [sic] these procedures, fundamental due
25 process procedures. Attorneys at every step of the proceeding
26 were under monitoring, and we're achieving extraordinarily high
27 marks for timeliness and process.

28 And then the remedial sanctions piece that I was

1 talking about, we're working on that. That's part of the "R" in
2 CDCR that has been somewhat missing. And Mr. Hoffman with Adult
3 Paroles and his staff are working very hard to get those kind of
4 programs, and evidence-based programs, so that we have an
5 alternative to just pure revocation, which hasn't existed for
6 several years.

7 CHAIRMAN PERATA: I kind of get the feeling that
8 you guys are in the batting cage, and somebody else is throwing
9 the balls frequently.

10 My experience, where I represent, violating
11 parolees has become a practice used by the police in concert
12 with the political structure of the city. If the Mayor's
13 getting heat that crimes' going up, cops go out there; they
14 violate some guy, and then there we go.

15 It's kind of a crummy way to do business, and
16 you're at the other end of it.

17 But it seems like it would be, once you get your
18 hands on these people, it would be the next step of trying to do
19 some kind of an assessment of who they are and what they're
20 doing.

21 Do you use standards? Is that part of what you
22 do? Or, is it just a question of did you do something wrong,
23 and how you're going to pay for it?

24 MR. MONDAY: Well, we have a bail schedule,
25 Senator. If you did something wrong, this is it.

26 But zero to twelve is the standard that all the
27 deputy commissioners have, and it's compartmentalized out:
28 Here's the guidelines.

1 But if you decide to give zero for a revocation,
2 you as a deputy commissioner can do that. Obviously, you need
3 to amply justify why this inmate that otherwise might be in a
4 five to nine revocation band, you're suggesting zero or continue
5 on parole. And that may be alternative sanctions; this guy's
6 got a job; he kind of fell off the wagon.

7 CHAIRMAN PERATA: But the sanctions, that has
8 sort of a punitive sound to it.

9 Do you try to reconstruct? You know, he fell
10 over, but do you try to stand him back up?

11 MR. MONDAY: Certainly most of parolees that come
12 before us, Senator, unless it's a very heinous parole violation,
13 have had multiple opportunities on parole. This wasn't their
14 first stumble, typically, when they come before the Board.

15 The parole agents in the field under DAPO have
16 sanctions that they can apply, and they can continue them on
17 parole. They had a dirty test; this guy's a life-time drug
18 abuser; he's going to have some problems probably, initially.
19 And they do a lot of programing locally that they don't have to
20 report to the Board.

21 When they finally report one of this type of case
22 to the Board, they're kind of out of options. They're just
23 saying, well, this guy's just not getting it; he needs to go
24 before the Board.

25 We can still apply sanctions even at that point,
26 alternative sanctions, remedial sanctions, if there are such
27 available. Otherwise, it may be a short-term revocation is
28 appropriate to try and dry him out, put him back in drug

1 programing within the institution, and then bring him back out
2 on parole.

3 CHAIRMAN PERATA: Do you think you feel any
4 pressure to keep more of these in than let them back out?

5 MR. MONDAY: Not feeling that pressure at all,
6 Senator. I actually -- that goes to Senator Ashburn's question,
7 the dotted line, if you will.

8 If you look at the org chart, there's a dotted
9 line between the Parole Board and Secretary Tilton. And that
10 dotted line to me is the autonomy -- the decision autonomy of
11 the Board.

12 The dashes, if you will, if the dots -- if the
13 holes are the decision autonomy, the dashes must be something.
14 My interpretation of that is the support services, whether it's
15 budget, or fiscal, or personnel, those resources of the Board in
16 the re-org. And in the Youth Authority and others, they went to
17 what we lovingly call the Mother Ship, where they are tasked to
18 us rather than assigned to us.

19 CHAIRMAN PERATA: I've just exhausted my
20 knowledge of the subject. But the troubling part of the whole
21 system, and this is not of your making, but we put people out on
22 parole, and we have very little in the way of being able to
23 structure that.

24 I would be very interested in, at some point in
25 the not too distant future, some professional thoughts on how to
26 improve upon it even more.

27 You are responding to the lawsuit. But now,
28 having watched this work for a while, and you think that it

1 seems to be working well, if there is under the circumstances --
2 I mean, 80,000. That's a lot.

3 MR. MONDAY: Don't misunderstand me, Senator.
4 And maybe I misinterpreted it to you.

5 The process, the parole revocation process, is
6 working well.

7 Your question might have been more broad: Do we
8 think parole violations and --

9 CHAIRMAN PERATA: Now I'm asking you that
10 question, yes.

11 MR. MONDAY: And that's certainly a challenge,
12 Senator, when there are that many individuals that are
13 violating. And that's an issue that we're all working on.
14 Again, the big "R" that totally got ignored, as all of us know,
15 in the institution for a lot of years.

16 And they're trying to put that back in so that
17 these perspective parolees -- because when we talk about lifers,
18 that's a very small number that the Parole Board sees and makes
19 a determination whether they should get out or not.

20 This other 95 percent or so of the prison
21 population, that 172,000, are coming out on parole on a
22 determinate sentence. The Parole Board doesn't see them. We'll
23 see them in the parole violation series, those that are not
24 successful.

25 In the institution, they need to do -- and
26 they're working on that -- doing a better job of providing those
27 rehabilitative resources, those educational and training
28 resources.

1 Lester Maddox years ago, Atlanta, said, "Do you
2 want a lesser recidivism rate? Give me a better class of
3 inmate."

4 CHAIRMAN PERATA: No one's quoted him for years.

5 [Laughter.]

6 MR. MONDAY: Probably not people as old as me.

7 But that's so true here. We're not doing enough
8 inside to get them ready to come outside, and then we just
9 release them. They got a four-year term? Release them at half
10 of that, two-year term, and then expect they're going to be
11 fine. And they're not.

12 I know that Director Hoffman with DAPO, they're
13 working on the other side of that, programs in the community,
14 enriching within the community. And Marisela Montes, that you
15 confirmed here a month or so ago, working on that program
16 element.

17 That will help -- and you said that right. We're
18 the through, but we don't recruit parole violators. They come.

19 I'd like to see a whole bunch less, but it's
20 going to be through the programing rather than -- when they show
21 up on us, we've got to do the process.

22 CHAIRMAN PERATA: This is the audience
23 participation portion of the hearing. Would anybody like to
24 come up and speak in favor of the nominee, Mr. Monday?

25 MR. ANDRES: Thank you, sir.

26 If it please the Committee, my name's James
27 Andres. I'm a deputy commissioner with the Board of Parole
28 Hearings -- James Andres, A-n-d-r-e-s -- and have been for two

1 years.

2 I've been a lawyer for 31. I worked extensively
3 with Mr. Monday when he was a deputy commissioner and I was a
4 lawyer.

5 CHAIRMAN PERATA: You "was" a lawyer? You're no
6 longer a lawyer?

7 MR. ANDRES: I am, sir. I am.

8 CHAIRMAN PERATA: Oh, I was going to congratulate
9 you if you weren't.

10 MR. ANDRES: Thank you.

11 You can see how smart Mr. Monday is, how up on
12 the issues he is.

13 I also want the -- to make my views known that
14 how fair he is. If I were a litigant in an administrative
15 hearing, this is the man I would want, and that would be
16 regardless of whether I was on the plaintiff's side or the
17 defense side. Very, very fair minded, open minded person.

18 CHAIRMAN PERATA: Thank you. High praise.

19 MR. GRAY: Thank you, Mr. Chair and Members.
20 Matt Gray on behalf of Taxpayers for Improving Public Safety.

21 Mr. Monday inherited a great mess. He's working
22 through it. There's still much to do, but we're confident in
23 his abilities, and we like his candor, too.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 MS. KLINGE: Good afternoon, Senators. I'm Jill
27 Klinge, a Deputy District Attorney of the Alameda County DA's
28 Office.

1 And in response to Senator Ashburn's comments at
2 the last hearing, you're only going to hear from two of us
3 today.

4 CHAIRMAN PERATA: You remembered.

5 MS. KLINGE: We remember. We learn. We're
6 lawyers, but we can still learn.

7 [Laughter.]

8 MS. KLINGE: So, I'm appearing in numerous
9 positions. I'm appearing before the Committee as a
10 representative of the California District Attorneys'
11 Association, and as the Deputy DA from Alameda County that is in
12 charge of and the only person that does most of the lifer
13 hearings in Alameda County.

14 I'm a member of the Lifer Committee. It's the
15 California District Attorneys' Association, and I hope you all
16 received a letter from the CDAA in support of Mr. Monday's
17 confirmation. And hopefully, you received some letters from
18 some of the elected officials from various counties.
19 Specifically, Los Angeles County wanted me to make sure you
20 received their letter from Steve Coolie. If you did not, I have
21 copies if anyone would like to see them.

22 The California Lifers Committee reached a
23 consensus after speaking to the members. Everyone was
24 overwhelmingly in favor of Mr. Monday's confirmation.

25 I did also receive a call, and was asked to
26 mention that Jim Lark, from the Doris Tate Crime Victims Bureau,
27 wanted to be here to speak in favor of confirmation, but had a
28 family emergency. And he hopes that you received the letters

1 from the bureau.

2 As you all know, and we've all heard, Mr. Monday
3 has extensive experience in executive administration with the
4 California Youthful Offender Board, being chief deputy
5 commissioner. He conducted lifer hearings and parole revocation
6 hearings.

7 He knows his job, and he brings his hands-on
8 experience here to his new position.

9 He also can understand as much as any of us can
10 the inner workings between the Board and the CDCR after
11 reorganization. As Senator Ashburn and others have mentioned,
12 that has been a task: to adjust to the reorganization and make
13 it work.

14 He also is an effective problem solver. And I'm
15 just going to go briefly into incidents that I have had with
16 Mr. Monday and dealing with the process.

17 He put together -- is putting together the fixes
18 needed to address the lawsuit to reduce the backlog. And the
19 backlog has gone down dramatically.

20 He has had the ability to have the DAs work
21 together, defense bar work together, Commissioners work together
22 as much as we can to keep and prevent postponements. As you've
23 mentioned, there was a lot of problems with notices and packets
24 being sent out to the parties to the hearings.

25 One particular institution just was so bad, we
26 couldn't deal with it any more, and we called Mr. Monday. He
27 immediately started the fix, even though the institution's staff
28 is not officially under the Chief Executive Officer. That

1 institution, we were getting notices very late, and I would show
2 up without any packets.

3 I spend of my time calling prisons, asking for
4 psych reports, asking for Board reports. And I'm willing to go
5 the hearing, and Mr. Monday would ask me, "Can you still do the
6 hearing? Is there any way we can make it work? I'll work to
7 make the system keep moving."

8 But once he got on that institution, I'm now
9 getting packets three to four months in advance, something I've
10 never seen before. So, he fixed the problem once we presented
11 it to him, and it fixed in a quick manner.

12 The psych reports, I've now seen the new ones
13 roll out, and it's night and day between the old and the new.
14 We're going to have some consistency. We have things we can
15 compare one to the other, instead of looking at a packet and
16 having ten different psych reports done in ten different
17 manners, and trying to glean anything from these.

18 So, a lot of the changes that he's brought, and a
19 lot of the problems that he inherited, he has dealt with in an
20 extremely professional and effective manner. And that's why
21 CDAA and me personally support his confirmation.

22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MS. DANVILLE: Good afternoon, Senators. Thank
25 you for allowing me to speak. And while I'm going second, I'm
26 going to be shorter than Ms. Klinge.

27 My name is Sara Danville. I am the Assistant
28 District Attorney for the Riverside County District Attorney's

1 Office. I'm here on behalf of Rod Pacheco, our District
2 Attorney.

3 I did my first lifer hearing back in 1995 as a
4 deputy DA. I started our Lifer Unit in 2004. Last year, as
5 Chief of the Major Crimes Division, I oversaw the Lifer Unit,
6 and now as Assistant DA, I also oversee the Lifer Unit.

7 Mr. Monday is perhaps one of the best executive
8 officers at this organization. I have had the pleasure of
9 dealing with him, and he is honest, hard working. He's fair.
10 He returns phone calls in a timely manner.

11 He gets right to the point. He's noble. He's a
12 straight shooter. He is on top of things, and he gets things
13 done.

14 He also takes the time to go to meetings to
15 figure out exactly what everybody's unique roles are in this
16 process and in this system. One of the issues that's been
17 talked about is this no notice for the hearings, or untimely
18 notice for the hearings, and no packets arriving for the
19 hearings.

20 But what I think is important for you to know is
21 how Mr. Monday dealt with this. It wasn't as though I called
22 him and said, "You know what? The prisons are violating the
23 law. They're not getting us our notices within 30 days. Do
24 something."

25 No, he doesn't just do something. He says,
26 "Well," kind of like Ms. Klinge said, "what can you do? Are
27 there victims? Are they going to be there in person at the
28 hearing? Are you going to be there in person at the hearing?"

1 Engaging in a question and answer session to figure out, is
2 there some compromise that we can come to, instead of, well, you
3 violated the law, so we're not going to bend.

4 And what has actually happened is that we do
5 sometimes -- we were getting late notices. And if we could make
6 it work, we would still go to the hearing. But you know what?
7 As Ms. Klinge said, the problem has been solved. But the
8 problem has been solved because of his management of this Board
9 of Parole Hearings.

10 And because of his management, we ask that you
11 please confirm him. We are very much in support.

12 Thank you.

13 CHAIRMAN PERATA: Thank you.

14 MR. MILLER: Good afternoon, Senators. Thank
15 you for the opportunity to speak briefly.

16 My name is Donald Miller. I'm a former lifer. I
17 have a law degree, and I work for two law firms and about eight
18 attorneys who do parole hearings and the litigation side of
19 things, involved almost exclusively in matters involving the
20 Parole Board and the Governor on parole issues.

21 Thirty-two of the lifers who we've represented
22 have been released by the courts, reversing the Board's
23 decisions and the Governor's decisions. Many -- only one has
24 committed a further crime, and it was minor.

25 I -- all of the attorneys with which I work, all
26 of us deal with the Board on almost a daily basis, highly
27 commend Mr. Monday and strongly recommend his confirmation.
28 He's probably the most competent, able, conscientious person for

1 the job.

2 And I don't have to say any more, because you've
3 heard all the other accolades.

4 One of the things that you haven't given him
5 credit for today, when he took over there was another backlog, a
6 terrific backlog in preparing the transcripts of the hearings.
7 They were months behind.

8 The Penal Code requires those to be prepared
9 within 30 days. If they're not prepared, the review can't go
10 forward. The litigation can't go forward.

11 And from my last information, it's almost current
12 now. He's accomplished a lot of those things.

13 The only other thing I want to address is
14 something that you've asked the most questions about, the
15 backlog of hearings. Obviously, Mr. Monday doesn't make the
16 parole decisions. The Commissioners do. He has no control over
17 that.

18 And the backlog isn't going to get better no
19 matter who the Executive Director is. It's going to get much
20 worse.

21 And here's my recommendation to the Committee,
22 respectfully. When your predecessor enacted the statute that
23 requires that when a lifer has fulfilled all the requirements
24 and no longer poses an unreasonable risk of danger, a parole
25 date must be set.

26 And the other statute that was enacted at the
27 same time appointed the proper number of Commissioners to handle
28 the number of hearings that would be required if that law were

1 followed.

2 But when you have a Governor who appoints people
3 who don't have any particular qualifications to determine
4 parole, and who don't represent a cross-section of the community
5 like the statute requires, and who are put on the Board to do
6 what these Commissioners are doing, and that's denying parole 99
7 percent of the time, and having the Governor reverse
8 three-quarters of those, and then of all these inmates who don't
9 pose a further risk of danger to the community, instead of being
10 taxpayers like myself, are being warehoused until their death in
11 prison at a tremendous expense to the taxpayer, and have to come
12 back for hearing, after hearing, after hearing.

13 You need five times the number of Commissioners
14 you have now to hold all those hearings. The backlog can only
15 get worse. There's only one person that can solve that, and
16 that's you, and the people that you approve and confirm to those
17 positions as Commissioners.

18 I respectfully thank you again for the
19 opportunity to speak.

20 CHAIRMAN PERATA: Thank you.

21 MR. ESTRADA: Good afternoon, Senators.

22 CHAIRMAN PERATA: Don't get too comfortable.

23 [Laughter.]

24 MR. ESTRADA: My name is Ramon Estrada, R-a-m-o-n
25 E-s-t-r-a-d-a. I'm a deputy commissioner for the Board of
26 Parole Hearings and also President of the Association of
27 California Parole Deputy Commissioners.

28 And I'm here on the behalf of the membership to

1 support Mr. John Monday for Executive Officer of the Board of
2 Parole Hearings, California Department of Corrections and
3 Rehabilitation.

4 Mr. Monday, we feel, brings a wealth of
5 experience into the Executive Officer position, as he has served
6 in various positions in the field of Corrections, such as a
7 deputy commissioner, Chief Deputy Commissioner with the Board
8 of -- Board of Prison Terms -- or Board of Parole Hearings,
9 formerly the Board of Prison Terms. Deputy Secretary for YACA,
10 Youth and Adult Correctional Agency.

11 And also from the year 2000 to the year 2005 -- I
12 need to tell them this, Mr. Monday -- he was the Northern Vice
13 President of the Association, and did an outstanding job for
14 us.

15 We feel that Mr. Monday's experience as a deputy
16 commissioner, working in the field, his experience as Chief
17 Deputy Commissioner working in an administrative position with
18 the Department of -- with the Board of Parole Hearings, I think,
19 is needed at this time at the Board of Parole Hearing Division,
20 continues to adjust to the numerous changes and court decisions
21 mandated by the -- for the Parole Board.

22 We feel that Mr. Monday is the right person for
23 this position, and this is the right time.

24 So, on behalf of the Executive Board, members of
25 the Association, I strongly support -- we strongly support
26 Mr. Monday for the Executive Officer of the Board of Parole
27 Hearings.

28 CHAIRMAN PERATA: Thank you, sir.

1 Anyone further?

2 Anybody in opposition?

3 You dodged it. Good for you.

4 Well, first of all, I just want to say that I
5 will be delighted to be supporting your confirmation.

6 But I'm going to ask you to think about, we're
7 going to need your help a little bit here.

8 We all took a very difficult vote on the Floor a
9 while ago to provide the Governor with what he said he needed in
10 order to forestall further encroachment by the federal
11 government into running our prison system. But I don't think
12 any of us were pretty happy. It was the kind of vote that we
13 had to take, and we took it.

14 But having spent enough time sitting here,
15 listening to people engaged in the Corrections system, it is
16 every bit of what we think it is in terms of a mess.

17 And it sounds like you've done a really good job
18 in your corner of the room to clean it up.

19 What I'd like you to think about -- and you've
20 got a little time left on your clock. And you're not in any
21 jeopardy, not from me, anyway -- I'd like you to look at the
22 parole portion of that. And you mentioned the words
23 "sanctions," and "assessments."

24 I would like to know as a professional, and
25 someone that seems to have a cross section of respect in your
26 community, your professional community, I'd like to have your
27 ideas, and thoughts, and recommendations candidly of the way you
28 would see improving it, what we might need to have done.

1 This is being asked, and I'm asking for it. So,
2 you can probably, if anybody's running downstairs now to say,
3 "Be careful," the accountability's not to them right now; it's
4 to us.

5 But I think you could be very useful. It's a
6 rare opportunity we get this. Most of the time you're up
7 against the clock.

8 But I would like you to work with my staff. And
9 it doesn't even need to be formalized, as much as I think we
10 could benefit by a discussion, and maybe some recommendations
11 that my staff could hear, because we're all obligated here to
12 try to do better than our predecessors have been doing.

13 And I guess by way of a compliment, I don't ask a
14 lot of people to do anything when they sit there, but I'm going
15 to ask you. I'm going to put this over for a period of time.
16 But once again, you've dedicated your life to it. You've come
17 up through the ranks. You've worked hard, and you've got a lot
18 of respect. I admire and respect that.

19 So, when you come back, it will be to sort of
20 have a little conclusive discussion on what you're doing,
21 particularly the parole thing. I mean, the lifer stuff we're
22 going to go into with the next couple, but you're in a really
23 good position now to give us a hand.

24 So, with that, thank you very much for your
25 candor.

26 SENATOR ASHBURN: Mr. Chairman, I just want to
27 make sure that Mr. Monday is clear in what is expected of him in
28 coming back.

1 CHAIRMAN PERATA: Well, I'm going to have my
2 staff work with you.

3 I've got personally, representing Richmond and
4 Oakland, I've got a big interest in the parole side of that.

5 And I didn't even know you existed -- sorry -- up
6 until recently.

7 But more importantly, I didn't know the job you
8 had here. And that's why I would really just like to get an
9 angle on what you do, and what you think about what you're
10 doing.

11 That's it.

12 SENATOR ASHBURN: I mean, I just think no matter
13 who it is, if we're sending someone out and saying we're going
14 to postpone the vote on your confirmation, and you're expected
15 to do certain things to help us, to answer, to provide
16 information, that we're clear on what that is.

17 I don't know what you just asked of Mr. Monday.

18 CHAIRMAN PERATA: It was a secret.

19 [Laughter.]

20 CHAIRMAN PERATA: If you have any difficulty,
21 we'll get together.

22 MR. MONDAY: All right.

23 CHAIRMAN PERATA: Thank you all, for those who
24 testified in his behalf. You showed really good taste, and
25 congratulations.

26 MR. MONDAY: Thank you, Mr. Chairman. Thank you
27 all, Senators.

28 CHAIRMAN PERATA: We'll take a ten-minute break

1 in deference to her.

2 [Thereupon a brief recess
3 was taken.]

4 CHAIRMAN PERATA: We'll reconvene.

5 Okay, we have two members of the Board of Parole
6 Hearings, Janice Eng and Edward Martinez. I'd like to have you
7 both come up together, if you would.

8 You may be the first microbiologist that we're
9 confirming. It's probably a long story. We'll go into it
10 later.

11 Do either of you have family there that you'd
12 like to introduce?

13 MS. ENG: Yes, actually I do. My 89-year-old
14 father is visiting from Arizona, Edward Eng.

15 CHAIRMAN PERATA: Welcome, sir.

16 MS. ENG: So, I hope he can hear us. I told him
17 to turn up the hearing aid.

18 CHAIRMAN PERATA: It might be better off not
19 hearing.

20 [Laughter.]

21 MS. ENG: That's true.

22 And then my younger sister, June, brought over
23 youngest niece. Who, by the way, Senator Perata, she would like
24 your autograph to bring back to her class.

25 [Laughter.]

26 CHAIRMAN PERATA: I'm not Arnold, you know. He's
27 downstairs.

28 MS. ENG: That's Taylor Ann Peng is here, and she

1 would like your autograph later, if you wouldn't mind.

2 CHAIRMAN PERATA: I'd love to.

3 Mr. Martinez.

4 MR. MARTINEZ: Yes, Senator, I do. I have my
5 wife here for support, but I think she -- there she is. My
6 wife, Ladonna, who's just walking in.

7 CHAIRMAN PERATA: You thought she left.

8 [Laughter.]

9 CHAIRMAN PERATA: Well, they brought her back.

10 MR. MARTINEZ: Yes.

11 CHAIRMAN PERATA: Why don't we open with you,
12 Ms. Eng. You're up first, so go ahead and open.

13 MS. ENG: Okay.

14 Just so there's no confusion, I am Janice Eng.
15 And I have been a resident of the City and County of San
16 Francisco for the past twelve years.

17 I am -- actually, I'm honored to be before all of
18 you today, having been appointed really from the general public,
19 being that I have a very extensive business background,
20 specifically in the -- in the private sector.

21 I hate to give away my age, but I've had -- let's
22 just suffice it to say that I have well over 25-plus years of
23 business experience in a variety of industries, as you could
24 tell if you've taken a look at my resume.

25 CHAIRMAN PERATA: Which is why we know how old
26 you are.

27 MS. ENG: I'd forgotten about the microbiologist;
28 that's right. I did start my career as a microbiologist many,

1 many years ago, but in a lot of different industries and a lot
2 of different positions.

3 And basically, I think the underlying theme there
4 is that I have been dealing with all different types of people
5 throughout these 25-plus years, whether they be employees of
6 mine, colleagues in terms of working with them and developing
7 their careers, hiring, firing, also sitting across the tables
8 from my competitors and potential partners in negotiating very
9 complex contracts to do business together. And also in terms of
10 sitting with vendors, and doing audits for contract compliance.

11 And I think I was trying to narrow down how you
12 pull together all those years of different types of experience
13 and bridge it to what I do today, and it really comes down to,
14 when I took a look at it, it's the basic process of dealing with
15 people: collecting information, gathering data from all
16 different sources, whether that be from written documentation,
17 in face-to-face meetings. But gathering as much information as
18 you can, remaining objective and fair, assessing the information
19 that you have, and then being able to make a decision. That's
20 what you do in business, whether that be audit results, whether
21 it be finalizing a contract deal, whether that be doing an
22 employee assessment.

23 It's the same thing, the same basic process that
24 I do. That's what I bring to this Board. I do the same thing,
25 where I collect all the information, all the data that's
26 available to me, whether that be from the written documentation,
27 or collected with the face-to-face engagement and conversation
28 with the inmate. Collect all of that, get as much information I

1 can so that I'm in a position to make an informed decision.

2 In this case, it's different scenarios, different
3 parties. And in this case, in the prison setting, it's always
4 keeping in mind public safety.

5 So, that's pretty much it in a nut shell, trying
6 to take all that different types of experience, and how I really
7 bridge that into what I do today.

8 To be honest with you, never in a million years
9 did I ever think I would be sitting here today as a Commissioner
10 on the Board of Parole Hearings if you'd talked to me 25-30
11 years ago.

12 CHAIRMAN PERATA: Were you drafted, or did you
13 volunteer?

14 MS. ENG: A little of both; a little of both.

15 And I -- when I spoke with the Governor's Office,
16 I told them I wasn't sure if this is what I wanted to do.

17 CHAIRMAN PERATA: But you applied to do
18 something?

19 MS. ENG: Yes. I wanted to do something in
20 public service. I'd been in the private sector all my life.
21 I'd been involved in local politics in San Francisco.

22 And finally the light went off in me, and I
23 really felt the desire to do something in public service.

24 CHAIRMAN PERATA: You don't need to apologize.

25 [Laughter.]

26 MS. ENG: I'm trying to convince myself, I think,
27 is more like it.

28 CHAIRMAN PERATA: Thank you.

1 Mr. Martinez.

2 MR. MARTINEZ: Thank you.

3 Good afternoon, Mr. Chairman, Senators, members
4 of the staff.

5 Thank you for the opportunity to be here
6 today. As you know, I have dedicated most of my life to public
7 safety. I've always strived to achieve a greater level of
8 commitment to the community and its victims of violent crimes.

9 I have -- I take pride in my achievements, and
10 I've always stayed with the focus in maintaining a higher
11 standard of conduct.

12 I have a diverse background, beginning with, as
13 you know, a career in law enforcement, followed by working in
14 the private sector, and workers compensation. In addition, I've
15 worked as a criminal defense investigator, which has provided me
16 with a balanced and well-rounded perspective on crimes from the
17 defendant's point of view.

18 My diverse background has provided me with a
19 unique insight in the current position that I hold as a Parole
20 Commissioner, conducting lifer hearings. And I am truly honored
21 to have been appointed by the Governor and been given this
22 opportunity once again to serve the people of California.

23 And with that being said, I'm open to, again, any
24 questions that you may have. Thank you.

25 CHAIRMAN PERATA: Thank you both.

26 Going back, you were both here when we were
27 talking to Mr. Monday. The rehabilitation part of the system
28 is, obviously, even though public safety, you stipulated, is

1 your final deciding line, you're in the business of rehab.
2 People either rehabilitated to your satisfaction and deserve to
3 be released, or have earned the right to be released, or they
4 don't.

5 And I know that there's very few granted. I
6 think there were five paroles granted by Ms. Eng.

7 My concern is, candidly, that there are interest
8 groups out there whose mission in life is to make sure that a
9 lot of political pressure is kept up so that no one ever gets
10 out of prison, plain as simple.

11 And I don't question the motivation. I do know
12 that for some people it's a livelihood.

13 And I didn't realize the district attorneys
14 offices had Lifer Committees. What a dreadful way to hang out
15 with some people.

16 When there's that kind of pressure, and there's
17 so much emphasis in our society and has been in our institutions
18 to punish as opposed to rehabilitate, I am just -- and there's
19 nothing I can do about this. I'm a political animal, and I'm
20 subject to the same kinds of things. But there does seem to be
21 a great amount of effort in our society, in our culture, and in
22 this state institution to make sure damn few get out.

23 For me, the biggest concern is, people have got
24 to get a fair shake. When we had indeterminate sentences, the
25 idea was that people were going to improve themselves to a point
26 where they might be eligible. And from a 10,000 feet level, to
27 me it looks like when we grant so few, I'm suspicious of that.

28 I'm not going to second-guess you, just as an

1 overall statement, you know, I heard a Member of the Floor stand
2 up and make a speech about specific people doing specific
3 things. And then, you know, I traced it back, and I saw it on a
4 web site.

5 I expect that. I get attacked regularly, and
6 that's the price of admission for me.

7 But pressure groups out there leaning on you,
8 you're not accustomed to that. Microbiologists are not trained
9 for those kinds of things. Cops are.

10 Anyway, I just wanted to observationally suggest
11 that, and ask you: How much do you notice people who are asking
12 you to keep people, don't let them out? And how do you evaluate
13 them?

14 Now, we have some who are professional. There's
15 somebody here from Alameda County, my county, and that's her job
16 is to deal with the lifer situation. And I know enough about
17 why people do that. And again, I don't question that at all.

18 I just want to know how you evaluate people who
19 are saying, "Don't do this?"

20 MS. ENG: It is very foreign for someone like me,
21 that comes from -- from the general public, from business.
22 And -- and it's a different, very different environment.

23 But basically, I always approach -- every
24 hearing's going to be different; every situation's going to be
25 different. And I close off everything and just take a look at
26 the facts that are presented to me. Plain and simple.

27 And I always listen to what the representative
28 from the district attorney's position is. If there are victims

1 present, and victim's next of kin, the panel listens to that.

2 But we also take a look at all these other
3 different factors. And exactly what we look at, and exactly
4 what weight we put on is going to be different for every single
5 inmate.

6 So, do I let any outside organizations have any
7 undue influence over my decisions? No, absolutely not.

8 MR. MARTINEZ: And I as well. I have not had any
9 experiences where I feel any undue pressures or influences from
10 either side, whether that be the district attorney's office or
11 defense side.

12 I look at each individual case. I prepare it,
13 and I -- I try to, you know, make it consistent with the conduct
14 of the hearing, and then form the best decision that I can at
15 the end, you know, with the best result that we can come up
16 with.

17 CHAIRMAN PERATA: On one side you have the people
18 represented who put this person in the institution. I assume,
19 since they have no record of contact, at least not
20 rehabilitation, I assume that their position has not changed
21 since the time that person was convicted.

22 You have, obviously, the victim's family speaks
23 for itself.

24 And then, what have you got on the other side?
25 Those are kind of static factors. Then there's got to be the
26 dynamics of, what has this person been doing for 15 or 20 years?

27 How do you balance those two things?

28 MS. ENG: I've had many situations, believe it or

1 not, where the deputy district attorney has commended inmates on
2 their progress that they have made while incarcerated. And
3 they've actually --

4 CHAIRMAN PERATA: Don't let Rod Pacheco find that
5 out.

6 [Laughter.]

7 MS. ENG: Well, there are situations where they
8 do -- I mean, they're being honest that, you know, that they'll
9 state that, "We commend the inmate for all this work; however,"
10 and then there's the however.

11 And believe it or not, I've had quite a few
12 instances where the victim's next of kin were actually for
13 release of the inmate.

14 So, you get them on both sides.

15 CHAIRMAN PERATA: We get mainly more on the other
16 side, though, looking at the record.

17 MS. ENG: Absolutely.

18 But we still have to take a look at everything
19 that that inmate has been doing.

20 And I think that it really comes down to how well
21 you're able to engage the inmate in a conversation where they
22 can truly open up. And where you can sort of peel back the
23 layers and get a better understanding of, are they just telling
24 me what they're used to telling all panels? Do they really
25 understand what they've been doing and why?

26 And that's the whole purpose of really getting
27 into the one-on-one discussions with them. So, it's an open
28 book.

1 It all depends upon how that inmate responds,
2 and if they -- if they can communicate to the panel, you know,
3 that they really do understand, that they have dug deep down
4 inside themselves and they have changed.

5 And I have seen where the district attorney's
6 offices, they may not strongly oppose. Though they may oppose,
7 but they may not strongly oppose. So, it varies.

8 CHAIRMAN PERATA: Have you noticed an improvement
9 over the last six months in getting more complete information
10 and in a timely manner?

11 MR. MARTINEZ: Yes. Yes, we have. There has
12 been an extremely -- a great improvement in our packets that we
13 receive. And they've been -- we've been getting them -- I speak
14 for myself --

15 CHAIRMAN PERATA: Yes, sure.

16 MR. MARTINEZ: -- in a timely manner, and ample
17 time to be able to review them, and to process them. And then
18 to, once you arrive at the institution, to be able to take
19 measures in -- in reference to whether there's some issues that
20 need to be addressed prior.

21 And again, and I speak of situations where
22 someone might be inconvenienced because there might be an issue
23 that -- possibilities that that particular hearing might not
24 move forward. And so, it gives us an advantage there as well.

25 So with that, I -- I do see that there has been a
26 tremendous change in that.

27 CHAIRMAN PERATA: You guys get to hang out in
28 some really neat places, too.

1 [Laughter.]

2 CHAIRMAN PERATA: Mr. Padilla.

3 SENATOR PADILLA: Hello again.

4 MS. ENG: Hello.

5 SENATOR PADILLA: Let's start with the first
6 question I asked when I had a chance to meet with you privately,
7 which is: How is it going for you? Are you still liking it?
8 Any change of mind here?

9 MR. MARTINEZ: Go ahead.

10 MS. ENG: He wants me to go first.

11 I'm here.

12 [Laughter.]

13 MS. ENG: I'm here, and even with -- I mean --
14 and we did discuss this, the tremendous workload. I mean, I'm
15 used to 80-hour weeks in the corporate world, but as I was
16 saying to the Senator earlier this week, there was always a
17 light at the end of the tunnel.

18 This is difficult. But at the same time -- and I
19 think probably my -- my colleagues, my fellow Commissioners feel
20 the same way -- I'm really happiest when I'm in the middle of a
21 hearing and in a conversation with an inmate. Believe it or
22 not, it is very rewarding.

23 And I know that it's hard for a lot of my friends
24 back in San Francisco, and my former business colleagues. They
25 say, "But you're never around any more. You know, you're always
26 working. You're always, like, piled up to here with reviewing
27 cases."

28 But it's so different, and it's so interesting

1 because every single case is unique, and it's always a
2 challenge.

3 So, from that standpoint, it's -- it's very
4 rewarding.

5 Yeah, I wish that I could gain a day or two back
6 a week to do other things, but for right now, it's definitely
7 worthwhile. At least to me it is.

8 SENATOR PADILLA: Mr. Martinez?

9 MR. MARTINEZ: I share the same feelings as my
10 colleague in reference to -- it's still, again, noting that it
11 is a stringent schedule that we have to maintain, and time away
12 from family members. And that's always been a number one thing
13 for me, my family.

14 But I feel that -- that I'm doing something
15 extremely important. And I feel that I -- I do a good job at
16 it, and that I'm still, even at the end of the week, when it's
17 -- I'm tired, and it's been a long week, I -- you know, for some
18 reason I still -- I do look forward to going back and -- and
19 doing it all over again.

20 SENATOR PADILLA: Well, I thought it was
21 important to ask the question not just privately but publicly,
22 because from a 30,000 foot level, we see the turnover on this
23 Commission as one of the challenges and one of the issues that
24 we have for fair hearings, consideration, quality of
25 consideration for the inmates that come up.

26 Knowing now what you know now versus when you
27 first started, and it's been less than a year, but you've
28 obviously seen a lot more. You've gotten into some sort of a

1 groove in the position. You already recognize sort of the
2 quality of the material and the information provided to you to
3 you prepare for the hearing itself.

4 Looking back to when you first started, do you
5 feel you got enough guidance, sufficient training? Because you
6 were making decisions right away, and affecting people's lives
7 right away, was it sufficient at the time?

8 If not, how would you improve upon that
9 transition, that start-up for future new Commissioners.

10 MR. MARTINEZ: Well, I feel when I -- again, when
11 I first was appointed and was trained, and received the
12 training, again, I felt that it was adequate.

13 Certainly you go through a lot of information
14 that you try to assess in a very short time period. A lot of it
15 will -- will attach itself, and a lot of it won't. But as you
16 go along, then a lot of things certainly start to make sense.
17 They kind of come together.

18 When I was at the point where I needed to go out
19 and start conducting the hearings on my own, again, I was still
20 given the opportunity to -- to well, to have that -- make that
21 decision, whether I was ready or not.

22 They asked me if -- if I was ready to go out, and
23 they gave me that option. It was my decision at that time. I
24 felt confident that I could go out and handle a hearing, again,
25 already been involved in over a week-and-a-half or so of
26 observation and participation, plus mock hearings that I was
27 involved in as well.

28 So, the training I felt was adequate. And what

1 I've seen is that it's gotten better, because we've had
2 continued training throughout since I've been on the Board. And
3 -- and that's a gamut of, you know, legal issues, and policies,
4 and so forth, and just a variety of different training that
5 comes up as we go along to better assist us.

6 And just the fact of having legal, our legal
7 department available to us, somewhat at our beck and call, so to
8 speak, that's also a comforting factor because there are times
9 when we don't have the answers, and we need some assistance, and
10 they're there.

11 As Commissioner -- Mr. Monday had mentioned about
12 the Blackberry that's been provided, which is a phone number
13 that the legal will carry, one specific individual will carry,
14 and will be available to us throughout the day and even into the
15 afternoon, late afternoon if necessary.

16 MS. ENG: Late evening, too. I'll attest to
17 them. I have called them at 8:00, 9:00 o'clock at night while I
18 was in a hearing, and they were there to give the support.

19 I agree with Commissioner Martinez. I started, I
20 believe, a few months after Commissioner Martinez did.

21 And being one that has -- has developed training
22 for corporations, I know something about training. And I felt
23 that the training that was given to me personally was very, very
24 good.

25 But it is an awful lot of information at one
26 time. And you -- and it all comes together when we go out into
27 the field.

28 And again, we're all given the opportunity to

1 observe first, and then I was given the opportunity to
2 participate on a three-person panel. So, you kind of wean
3 yourself into it. And even at that point in time, I was always
4 asked, "You tell us when you feel ready to go out on your own."

5 And I did. I finally said, "I'm as ready as I'm
6 ever going to be, so let's go."

7 And the Board, Mr. Monday made sure that all new
8 people start out with very seasoned deputy commissioners. So --
9 and we know that at any given time if we get stuck in any of
10 those hearings, we can call a recess to double-check
11 things. So, they provided true safety nets to each and every
12 one of us.

13 So, and we learned while we were doing it and
14 faced with it, but we always knew where to turn to, to make
15 sure, just to confirm that we were going down the right track.
16 And there was always somebody right there with us.

17 SENATOR PADILLA: My last question, you heard me
18 ask it earlier, is that of your workload, and all the other sort
19 of demands on you. It's not an easy job. It is long hours.
20 It's a lot of travel, a lot of reading, late night reading,
21 intense, emotionally draining hearings.

22 With all those pressures on you, how close to, or
23 are we there, at the point where the integrity of the process is
24 compromised?

25 MS. ENG: I don't believe the integrity of the
26 process is compromised at all. I think that there -- we, the
27 Commissioners have enough common sense to know when we need to
28 take a break, or do whatever we have to do to be able to

1 continue.

2 I have, believe it or not, I have, I think
3 actually Commissioner Martinez has beaten me with the late
4 time -- I have finished up at after 10:00 o'clock in the
5 evening, where I ended up giving a grant late at night because
6 it was the right thing to do.

7 So, I don't think -- I don't believe for a second
8 that the integrity of the -- of the hearings are compromised in
9 any way.

10 If I felt that way, if I couldn't go on, then I
11 would discuss it with defense counsel and everybody else and
12 say, "I don't -- I don't think it would be fair to the inmate to
13 continue, because I am just either under the weather, or
14 something."

15 I just wouldn't compromise it.

16 Does that make sense to you?

17 SENATOR PADILLA: It makes sense.

18 MR. MARTINEZ: I agree as well in reference to
19 that.

20 Although, those hearings, especially when there
21 are four scheduled, it -- sure, it does make it for a long day.
22 And it's a consistent -- consistent day where we're -- we're
23 working throughout. There's hardly any breaks because we need
24 to continue.

25 And the fact of the matter is that often times, I
26 mean, you'll have individuals that are waiting, such as the
27 victims or victim's next of kin, that -- that don't understand
28 why that particular -- why it's taking so long.

1 So, there's certainly a lot of areas there of
2 concerns that we have to keep abreast of and try to maintain
3 that schedule.

4 But as far as compromising, I think that I,
5 myself, and as Commissioner Eng has indicated, that we're,
6 myself, are capable of making a decision.

7 If -- if I feel that it is, I will certainly take
8 is that step and either --

9 SENATOR PADILLA: I'm happy to hear that. And if
10 that ever changes, we hope you'll let us know.

11 My reason for asking the question, and
12 emphasizing the point is, again, recognizing the turnover
13 there's been on the Commission. I'm sure there's multiple
14 factors for it, but I'm convinced that physical, if not mental,
15 if not both physical and mental fatigue is the part of it. And
16 if that is in the equation, and I am fearful that it could
17 potentially compromise the fairness of the hearings for the
18 inmates.

19 So, thank you both.

20 MR. MARTINEZ: Thank you.

21 CHAIRMAN PERATA: Your dad's hanging in there
22 with us.

23 Gilbert?

24 SENATOR CEDILLO: What's your record? How many
25 people have you heard? How many people have you released, and
26 how many people have you kept? How many people have you heard,
27 kept, and released?

28 MS. ENG: I think -- I wonder if I have all that.

1 I don't have the numbers.

2 I can speak for my -- I think that to date, I've
3 had either six or seven grants. And only one so far has been
4 completed, and it was reversed by the Governor.

5 You always remember your first grant. It was
6 December 20th, 2006.

7 SENATOR CEDILLO: So, there's obviously not going
8 to be a lot of pressure on you from outside groups for the
9 number of grants.

10 You did one? Is that accurate?

11 MS. ENG: No, I think -- I believe to date, I
12 have seven. There's only one that's been completed. All the
13 others are pending.

14 SENATOR CEDILLO: So, have you experienced any
15 pressure from outside groups in terms of your decisions?

16 MS. ENG: Not to my knowledge directly, but I --
17 I assume that there's a target on my back by some.

18 I'm going to be honest with you. I have to
19 assume that.

20 In this position, you're not going to make
21 everybody happy.

22 SENATOR CEDILLO: But no direct contact from
23 other groups?

24 MS. ENG: I'm sorry?

25 SENATOR CEDILLO: No direct contact from other
26 pressure groups, lobbying groups, Doris Tate Victim Rights
27 groups, lock-them-up-and-throw-away-the-key groups? Anything
28 like that?

1 MS. ENG: Any direct contact, no, no.

2 SENATOR CEDILLO: How about you?

3 MR. MARTINEZ: To date, Senator, I have -- I have
4 nine grants that I have given. And I'm not sure as to exactly
5 how -- where they're all at, at this point.

6 I know some have been reversed, one by the
7 Governor. I know there's one that's been released.

8 SENATOR CEDILLO: Any response from any of these
9 groups yourself?

10 MR. MARTINEZ: No, sir. I have not had any
11 direct contact with any response as far as opposition in that
12 sense.

13 SENATOR CEDILLO: What would you say is the main
14 reason for denials?

15 MR. MARTINEZ: Well, Senator, the main reason for
16 the denials, obviously --

17 SENATOR CEDILLO: I mean, you grant about two or
18 three percent, both of you. That means about 98 percent of them
19 are denied.

20 MR. MARTINEZ: The main reason for the denials
21 falls upon the inmate himself.

22 And again, I try to remain consistent in how I
23 conduct my hearings, and try to address all factors, all issues
24 for determining suitability or unsuitability.

25 If that particular inmate is not going along with
26 the program, or is not doing what he or she should do, then
27 obviously those are issue that -- that are of a concern to -- to
28 the Board.

1 And, you know, oftentimes I will kind of throw
2 this back on them, on the inmate, and say that -- because they
3 sometimes will tell us that we hold the keys. And I correct
4 them in the sense that, no they are the ones that hold the keys,
5 because if -- you know, they are the ones that need to -- to
6 earn their way out of there. And by doing so is by, again,
7 following rules, and regulations, and programing, and trying to
8 rehabilitate themselves, and try to present to the Board that
9 they have changed, and that they are rehabilitated, and are now
10 capable and willing individuals that can now return to society
11 and be a part of society, and actually contribute to society.

12 SENATOR CEDILLO: We were talking earlier about
13 the psych evals.

14 How far away for you, and how helpful is it to
15 have a fresh eval?

16 MR. MARTINEZ: How important it is, sir?

17 SENATOR CEDILLO: Yes, how helpful is it? How
18 important is it, a current, contemporary one?

19 MR. MARTINEZ: Well, the psychological
20 evaluations, again, it'll -- it depends again on that -- that
21 particular individual, that inmate that we're having a hearing
22 for, as to whether a psychological evaluation needs to be looked
23 into.

24 A lot of times, psychological evaluations are --
25 are consistent. They go, you know, just for an example, you
26 know, in a two, three-year time period or longer, they roughly
27 have the same information in that psychological evaluation about
28 that inmate. So much almost a cut-and-paste kind of a thing,

1 and it doesn't really tell us a whole lot, other than indicating
2 that it is a positive psychological evaluation. And again,
3 vice-versa, also would be a negative one.

4 But it is just one of the factors that we -- we
5 consider. And it's not just the sole factor of considering for
6 suitability or unsuitability. There's certainly other issues
7 regarding their parole plans, and their -- and obviously
8 discussion of the life crime, and their insight, whether they
9 get it, whether they know what they've done and the reasons why
10 they've done it, and be able to -- to articulate that to us in a
11 fashion that we feel comfortable that they're genuine.

12 And that's the thing that I look at, is it coming
13 from the heart, or is it just empty talk? And we get both; we
14 get both.

15 And as a Commissioner, I feel that we have to be
16 able to look at that, and be able to see that. And -- because
17 certainly an individual can program all they -- all they want,
18 and they can be extremely successful in their programing, but is
19 it -- are they really taking advantage of that? In other words,
20 are they learning by it, and not just doing it because that's
21 what they were told to do, and that's the way to get a date.
22 So, we should be able to distinguish that.

23 SENATOR CEDILLO: So, you're saying that besides
24 some objective criteria in terms of what you call programing,
25 some activities, some behavioral benchmarks, that you also look
26 into some subjective part; right?

27 MR. MARTINEZ: Yes.

28 SENATOR CEDILLO: And you try to evaluate that

1 through your conversations?

2 MR. MARTINEZ: Yes, sir. Yes, Senator.

3 And again, in discussion with them. And again --
4 and if they choose. Sometimes a particular inmate will choose
5 not to discuss the life crime. But even though they -- they
6 choose to do that, we can certainly talk to them about how they
7 feel as to what they've done, or about the crime. And again,
8 not getting into the specifics of it, but just their, you know,
9 their insight, and empathy, and remorse, and those areas.

10 MS. ENG: I'd like to add on to what my colleague
11 has stated, because I have found that so often -- I mean, we
12 face the fact, we sit across from these inmates every single
13 day, all day long.

14 I can't tell you how many state, "I feel remorse
15 for what I've done."

16 Part of our job is to say, "Okay, what does that
17 mean? Explain that."

18 And I find what's effective for me is, I just
19 keep asking questions. I say, "Well, I don't quite understand,"
20 to get them to talk more about it.

21 And that's the way we can see, is this just a
22 canned response, or do they truly understand? Do they truly,
23 truly understand what they've done, and what possibly triggered
24 them to escalate to the violence that they did, and they've
25 figured out what they need to do to prevent that from ever
26 happening again?

27 Of course, there's no guarantees in life, but at
28 least I think a key factor when we take a look at these inmates

1 is whether or not they've been able to -- they've looked into
2 themselves and figured it out: "I see all these different
3 things that were going on at any given time, and how this all
4 added up to me, just pushing me over the edge where I did what I
5 did." And that, "This is what I've done. This is -- these are
6 the things I have learned through this programing, that
7 programing, this article that I've read, in order to set myself
8 up and try to prevent me from being in that situation again or
9 anything similar."

10 And back to the psychological evaluations --

11 SENATOR CEDILLO: Let me ask you this, because
12 it's kind of a sophisticated, emotional place to be, right, for
13 people who are there, have had problems being civil.

14 Two questions. What services are we providing to
15 help someone have that emotional growth, to have that depth of
16 emotional understanding, that maturity of understanding that
17 their actions, the consequences of their actions? So, what are
18 we doing to get there?

19 And then, what are the impediments? What is the
20 physical environment do to restrict that? What's it look like?

21 MS. ENG: It depends what institution you're in,
22 because some institutions don't have available programing.
23 Other the institutions, we -- we hear all different types of
24 explanations from inmates that: I'm on the waiting list; this
25 is not available; we're in lockdown; I can't do this; I can't do
26 that.

27 And I feel part of my responsibility is to say:
28 Okay, so what other options do you think that you have; have you

1 thought about doing this? And I'll just throw out, you know,
2 alternatives.

3 And I'll watch them, and I'll -- and I'll see if
4 there's any recognition there. And I said, you know, "Do you
5 have the capability of doing that?"

6 And they'll say, "Well, yeah."

7 And I said, "So? Have you tried that?"

8 And they'll say, "Well, no."

9 And I'll say, "Well, do you think it's a good
10 idea to try it?"

11 Because they can. And I've had people, they sit
12 there and they say, "Oh, it's so important for me to reach out
13 to the at-risk youth, or to some of these young kids that are
14 coming in on determinate sentences that have been involved in
15 gang activities. And they're on the Ad Seg yard with me."

16 And I said, "All right, you're sitting there, and
17 you're complaining to me that there's not a program offered by
18 the institution." I said, "Have you ever thought about you
19 starting something that makes sense to you, that you can get
20 through to these younger kids?"

21 And all of a sudden, they'll like open up their
22 eyes and say, "Oh, you know, I didn't think about that."

23 And I said, "Well, try it out. Write out a
24 little plan. Do whatever you need to do and try it out. And
25 see if you could get a correctional officer to help you out, or
26 do whatever."

27 I always put it back on them. I always tell
28 them, "The choice is yours. You made the choices that you did

1 that got you into this situation. You have a lot of -- a lot of
2 things offered to you. It's your choice whether or not you want
3 to do something about it."

4 So, I always put the onus back on them.

5 But I also, because a lot of people don't think
6 about a lot of things, so I try to throw out other ideas for
7 them to consider.

8 But I also let them know, "You don't have to
9 listen to me. You don't have to do anything that I say. That's
10 your choice. But I highly recommend go back and read over this
11 transcript, after everything's calmed down, and take a look and
12 think about things."

13 And I've posed questions to them where I didn't
14 expect an answer. And they're sitting there, and I look at
15 them and I say, "That's a tough question, isn't it?"

16 And they said, "Yes."

17 And I said, "That's something that I hope you
18 continue to think about and dig for the answer," because it has
19 to do with their insight. And a lot of these -- a lot of these
20 inmates have never been really pushed to that point, to that
21 position.

22 SENATOR CEDILLO: And when there's no programs or
23 ability to attend -- the lockdown, the bunk beds, triple
24 bunks -- how are you able to evaluate someone if they're in that
25 environment?

26 MS. ENG: Again, we take a look at how much
27 initiative they've had, they've taken themselves, because
28 there're not going to be programs available. And if they're in

1 Administrative Segregation, they won't have it.

2 But they can get their hands on books. They can
3 get their hands on magazines. They can watch a video. There's
4 a lot of other things that they can do.

5 And that's why I feel, in my position, is to
6 point these things out to them and see if prior panels have
7 pointed that out, and whether or not they've done anything about
8 that.

9 So, they don't have to go to set programs. Quite
10 a few of them come back and say, "Well, I've been there, and
11 quite frankly, I don't like it. And I don't believe in what
12 they do."

13 I said, "Okay, so what do you think will work for
14 you in your substance abuse issue?"

15 And I talk to them about it, so that they can --
16 I have an exchange with them so they can figure out what might
17 work for them, because AA and NA is not for everybody. And we
18 try to tell them that that's an example of substance abuse
19 programing you can go through, but if it doesn't work for you,
20 what do you think will, and document it.

21 SENATOR CEDILLO: Thank you.

22 SENATOR ASHBURN: This is the time for those who
23 would want to speak in favor of the two nominees. If there's
24 anyone who'd like to testify in support, please come forward.
25 Give your name, and if you could be brief, we would appreciate
26 it.

27 MS. DEVINE: Thank you, Senators.

28 Good afternoon. My name is Carolyn Devine. I am

1 the Bay Area Chapter President of the California Women's
2 Leadership Association.

3 And I feel compelled to be here, speaking to you
4 this afternoon, because I partially, or may be fully responsible
5 our Commissioner Eng applying for this position and being
6 appointed.

7 CHAIRMAN PERATA: And you came up and admitted
8 it.

9 [Laughter.]

10 MS. ENG: It's all her fault.

11 MS. DEVINE: But one of the reasons that I did
12 encourage -- and Ms. Eng is a friend of mine -- and one of the
13 reasons that I encouraged her is because she has such a
14 dedication to public service and has wanted to be in public
15 service. And I guess I've ended up kind of being her mentor.

16 And she asked me what I thought about this
17 position, and I encouraged her to go for it.

18 Knowing her dedication, and now maybe I'm a
19 little sorry I did, because I never see her any more.

20 But one of the things that I will say is, when I
21 do talk to her, she says that it is difficult. There is a lot
22 of work. The caseloads are heavy.

23 But she has learned so much, and she does feel
24 like she's making a contribution to the -- to our community, to
25 the state, and doing the things that need to be done in this
26 very difficult parole process.

27 And I guess I'm proud of her because she's just
28 one of the few, if not the only one, that comes from the public

1 sector. And I think that's really to have that represented.

2 Thank you very much.

3 CHAIRMAN PERATA: Thank you.

4 MS. KLINGE: Good afternoon again, Senators.

5 I'm Jill Klinge with the Alameda County District
6 Attorney's Office.

7 You've made easier, now that I can speak about
8 both Commissioners at the same time and save even more time.

9 I'll begin with my multi-hat purpose, that I'm
10 also here for the California District Attorneys' Association,
11 and they are in support of confirmation for both Commissioner
12 Eng and Martinez, as are several elected district attorneys.
13 And the Doris Tate Crime Victims Bureau also asked me to mention
14 that they are in favor of confirmation.

15 I'm out in the prisons on an almost a daily
16 basis, and I have worked with Commissioners Eng and Martinez
17 frequently.

18 Both of them are extremely hard working, has
19 you've heard, and both of them create a very fair atmosphere in
20 a hearing.

21 We had mentioned before that if any of the
22 Senators wanted to come to observe a hearing, we're more than
23 welcome to accommodate that, because it's a very different
24 process than being in a courtroom. From a district attorney's
25 perspective, being in an administrative hearing, we feel
26 restricted, because we do have a more restricted role than we
27 would in a normal courtroom setting.

28 The inmate has an attorney. They are afforded

1 more rights than the district attorney is in this particular
2 situation.

3 The Commissioners that I personally look for are
4 Commissioners that understand the case law and Title 15. What I
5 am about to say may distance me from some district attorneys,
6 but I do understand that under Title 15 and the case law, and
7 the factors of suitability, inmates will qualify for release.
8 And that's -- that's the way it has to be.

9 My job is to look for public safety, not to
10 blanket oppose every inmate that comes before the panel.

11 Both Commissioners Eng and Martinez understand
12 Title 15 and the case law.

13 Commissioner Eng came from a public sector
14 background, and I've watched her evolve as a Commissioner into a
15 Commissioner that does understand the process and can question
16 an inmate.

17 Commissioner Martinez comes from a law
18 enforcement background, and already came with that ability.

19 When you sit across the table from the inmates,
20 you do have to glean whether they've learned the talk and are
21 just saying it, or whether they truly have been rehabilitated.
22 You know, whether they understand the 12 steps. They may have
23 gone to AA for five years, but if ask them what Step 8 is, and
24 they don't even know what it is, they haven't really gleaned
25 anything they can take out into society to help them with their
26 substance abuse problem.

27 There is a lot -- there are so many factors that
28 go into these decisions. And both Commissioners have learned

1 how to talk to inmates, victims, inmates' attorneys, and us in
2 the process, and have rendered fair decisions.

3 Commissioner Martinez granted -- did a grant when
4 I was DA, and I had victim's family there. And we were
5 strenuously opposed to release. And I'll admit, I was a little
6 bit upset with the grant. But when speaking with victim's
7 family, they felt they got a fair hearing. They were crying,
8 and they weren't happy, and I wasn't happy, but I do trust both
9 of them in the hearings, and their knowledge.

10 And for that reason, many district attorneys are
11 in favor of their confirmation, as am I. Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MS. DANVILLE: Good afternoon. Thank you again.

14 Sara Danville, Riverside County, again on behalf
15 of Rob Pacheco.

16 In preparation for this, I talked to John Reese,
17 our lifer deputy, who is like Ms. Klinge, who goes out and does
18 the hearings.

19 And because we haven't appeared in front of
20 Commissioner Eng, we a "No Position" on her.

21 However, we have appeared in front of
22 Commissioner Martinez, and this is what I've learned about
23 Commissioner Martinez.

24 Prio to the hearings, he reads every piece of
25 paper in those huge files. It is clear that he is very well
26 prepared.

27 And then, once they get into those hearings, in
28 spite of the crushing, overwhelming caseload, one would think

1 they'd be tempted to hurry it along so we can get out of here,
2 but that's not what happens. Commissioner Martinez is very
3 conscientious. He goes through and takes his time to make sure
4 that everybody in that room has a fair hearing. And they often
5 leave very late at night, as you've heard already today.

6 You know, one might think that we, as district
7 attorneys, look for special treatment for the victims, but
8 that's really not what we expect. We just expect that the
9 victims are acknowledged as being victims or victim's family and
10 having a loss, and that they have a right to be heard.

11 And that is what we get from Commissioner
12 Martinez. He doesn't bend over backwards for them. He does
13 what we want, just let them be heard and have their say. That's
14 what he does.

15 His law enforcement background has actually
16 proven to be helpful. Recently, during one of the hearings, one
17 of the deputy commissioners commented about that, and how that
18 actually helped her come to her ultimate conclusion, because he
19 helped her have a better understanding of what was actually
20 going on in the case.

21 And finally, while we haven't had a grant under
22 Commissioner Martinez, we have had differences of opinion. But
23 in spite of those differences of opinion, we've left those
24 hearings feeling like we, too, were heard. We had a fair
25 hearing. And while we didn't get what we want, the just thing
26 was done.

27 So for those reasons, we ask that you confirm
28 Commissioner Martinez. Thank you.

1 CHAIRMAN PERATA: Thank you.

2 MR. ESTRADA: Good afternoon, Senators.

3 Again, my name is Ramon Estrada. I'm a deputy
4 commissioner for the Board of Parole Hearings.

5 I'm here to request that these two individuals
6 next to me be confirmed as Commissioners.

7 I've worked with both of these individuals,
8 conducting lifer parole consideration hearings. And I believe
9 that they're both very fair, impartial, and very conscientious
10 in the work that they do.

11 I've been a deputy commissioner now for 12 years,
12 so I've done quite a few lifer hearings. And both of these
13 individuals, I feel, do a very good -- excellent job. They come
14 to the hearings very well -- very prepared. And any indication
15 that they're unfair toward the inmate is just simply not true.

16 I strongly recommend that both of these
17 individuals be confirmed Commissioner for the Board of Parole
18 Hearings.

19 CHAIRMAN PERATA: Thank you.

20 Opposition?

21 MR. MILLER: Good afternoon.

22 I've introduced myself. My name is Donald
23 Miller. I represent a number of attorneys.

24 I'll explain to you why you won't find any
25 attorneys up here opposing these people.

26 I -- we strongly oppose both candidates, but for
27 slightly different reasons.

28 I've personally examined about -- more than 20 of

1 Commissioner Eng's transcripts of the hearings that she
2 conducts. And the Committee has been provided with some copies
3 of some of those transcripts which illustrate some points about
4 how the hearings are conducted. They were submitted to the
5 Committee by mail.

6 In about 20 to 25 hearings, parole was granted
7 only once, and that was reversed by the Governor.

8 I've also examined about 15 or so of
9 Mr. Martinez's hearings that he's conducted.

10 How many people have paroled out of approximately
11 700 hearings conducted by these two individuals? Zero.

12 The statute requires that when these individuals
13 have served a certain amount of time, and have complied with all
14 the requirements, and are forensically evaluated not to pose a
15 further risk to public safety, they shall receive a parole date.

16 In 15 of those 20 or so decisions in which she
17 denied parole, the psychological evaluation -- and you heard a
18 lot of discussion about this earlier with Mr. Monday -- by an
19 expert that's hired for that purpose, who considers the crime,
20 the background, everything that's happened since the crime, in
21 all of those 15 cases the psychological experts have concluded
22 that the inmate has sufficient insight and remorse, and would no
23 longer pose an undue risk of danger to the community. And in
24 some cases, quote, "no more than the average citizen in the
25 community."

26 But they're all denied parole. So, these people
27 don't comply with the statute, and they don't comply with the
28 cross section requirement.

1 Ms. Eng has a record as a victims' advocate.
2 Everybody on -- all but two of the Board's present Commissioners
3 are former law enforcement. All of them are law enforcement or
4 victims' advocates.

5 Where are the other sectors of the community?
6 Where are people with experience?

7 Climbing the corporate ladder doesn't give you
8 any qualifications to determine -- to protect public safety by
9 determining recidivism.

10 Where are the former judges? Where are the
11 clergy, the psychologists, the psychiatrists on this Board like
12 other states have?

13 I believe that the duty of this Committee is to
14 serve as a check and balance against a haphazard political
15 appointment system, where we have a board that's appointed to
16 deny parole.

17 And I would respectfully close by making two
18 points.

19 If all of these people are going to continue to
20 be confirmed regardless of all of this, first of all your
21 backlog is just going to get worse.

22 And second of all, the greatest disservice is
23 going to be committed to the taxpayers in this state, because
24 the federal courts will take over the parole system, just as
25 they've already taken over the Medical Department of the
26 Department of Corrections. There have been four decisions in
27 the last month reversing Parole Board decisions or Governor's
28 decisions. Three of them have been ordered released.

1 The courts have issued over a hundred of these
2 decisions in the last four years, and they're going to get tired
3 of it if the Board doesn't start complying with the statute.

4 I propose that this Committee do something about
5 it. Twice before you promised me when I appeared before your
6 predecessor committees that you would -- you were going to have
7 discussions with the Governor about appointing particularly
8 qualified people that comply with the cross-section requirement.

9 There's nobody on our Board from the lower
10 economic strata of this state. Nobody on our Board from the
11 state's largest industries: farming, labor. Nobody. Only
12 people that are appointed to deny parole.

13 Please do what it might be difficult to do and
14 tell the Governor, "No. You've got to comply with the statute."
15 Otherwise, there's going to be dire consequences for everybody
16 in the state.

17 And I thank you for your time.

18 CHAIRMAN PERATA: Well, Mr. Miller, just in
19 response, we have in fact communicated both verbally and in
20 writing to the Governor on the very points that you've made. I
21 think the letter was subsequent to the last time you were here.

22 He does have the power and the authority to make
23 the appointments. Ours, of course, is to either approve or
24 deny.

25 But your point's well taken. What has it been,
26 eight months since we sent the Governor the letter?

27 But I'll once again let him know that you're
28 inquiring about it.

1 MR. MILLER: Thank you, Mr. Chairman.

2 CHAIRMAN PERATA: My pleasure.

3 Anyone else?

4 MR. SCHMIDT: Good afternoon.

5 My name Bill Schmidt, and thank you for giving me
6 this opportunity, Senators.

7 I am one of those attorneys that represents
8 inmates. For many years, I worked for the Board of Prison
9 Hearings and did state-appointed hearings. Now I only do
10 private hearings. I've done over 600 hearings.

11 There was a lot of good questioning that went on,
12 especially from Mr. Cedillo, or Senator Cedillo. And I felt you
13 didn't take it the next step.

14 You asked a lot of questions about pressure on
15 the Board members. And both of these candidates or
16 Commissioners responded that there wasn't any pressure.

17 However, their grants of parole are still in the
18 single digits. So, it's not the pressure that's on the
19 Commissioners that have been sent down here for confirmation.
20 It's their personal thoughts, feelings, and backgrounds itself
21 that is not in keeping with the statute or the law.

22 I've appeared three times myself before
23 Commissioner Martinez. In all three of those hearings I was
24 treated with disrespect, along with my client, the inmate.
25 Commissioner Martinez was not receptive to any difference of
26 opinion or any positive information.

27 I had three telephone calls from other attorneys
28 before I came up here today, and there's other attorneys in this

1 room who are afraid to come up here and speak before you because
2 of the potential for retaliation.

3 There's a lot of things that have been said by
4 these candidates. Commissioner Eng, I've never appeared before
5 her, so I don't have a position. However, she mentioned that
6 she asked questions, and she suggests other ways to get
7 self-help and therapy.

8 Well, there aren't any other ways, other than
9 getting your own book, or doing it on your own. However, the
10 CDCR filters the books, or returns the books, except in very
11 rare instances. So in fact, there aren't other ways to get the
12 self-help and therapy that the inmates are supposed to have.

13 There were questions concerning specific reasons,
14 or the main reason --

15 SENATOR CEDILLO: Can I ask you a question?

16 MR. SCHMIDT: I'm sorry?

17 SENATOR CEDILLO: Can I ask you a question?

18 MR. SCHMIDT: Sure.

19 SENATOR CEDILLO: Let me ask you this. Beyond
20 the moral and ethical duty that we might think, are there legal
21 duties that the state has in terms of -- the previous witness
22 indicated there was a statute that we had to comply with.

23 But in the course of getting to those end dates,
24 do we have affirmative duties?

25 Commissioner Eng said simply, well, if we don't
26 have a plan or a program, if we don't have capacity or
27 resources, that then an inmate has their own responsibility to
28 do that, as limited as those opportunities may be.

1 So, if I'm an inmate, and I'm in a room. There's
2 three or four people in the same room, all with various degrees
3 of civility, and I want to get out. I'm going to try to conform
4 myself to both survival within the institution, and what I'm
5 expected when I make a presentation, my next presentation at my
6 next date.

7 But if there's no resources, it just seems kind
8 of random, arbitrary, without definition.

9 So the question then, though, is, what is the
10 state duty-bound to do?

11 Because at some point, we've constructed a system
12 in which we have simply locked up people.

13 MR. SCHMIDT: Yes. I'd like to address that.

14 SENATOR CEDILLO: We've literally or figuratively
15 thrown away the key. We've created a system of review, but the
16 review is only by people who, with few exceptions, have spent
17 their careers placing people, or keeping people in that
18 institution.

19 MR. SCHMIDT: That -- that's correct. And
20 because the majority are either law enforcement background or
21 victims' rights organizations.

22 First of all, your assumption that if they get
23 this therapy, self-help, or come with a positive psychological
24 report, they can come to you with no 115s, no 128s, before this
25 Board -- and I can supply you, and so can Mr. Miller, with
26 inmates that are model inmates -- and they will not get a parole
27 date 99 percent of the time.

28 It doesn't matter if they come with all the

1 self-help, and therapy, a beautiful psych report, not just one
2 but perhaps ten. Based on the crime alone, these panel members
3 are keeping the inmates in prison.

4 Now, that issue is being litigated case by case
5 in habeas corpus litigation. I've got some published cases on
6 it, so do some of the attorneys that Mr. Miller represents. And
7 it's worked its way into the federal courts, and I assume it's
8 going to go to the U.S. Supreme Court at some point, the issue
9 of inmates that have met all the requirements of Penal Code
10 3041, but yet the Commissioners deny them parole over, and over,
11 and over again. Or, the Governor overturns the parole date,
12 based on the crime alone.

13 Now, regarding the self-help and therapy, there
14 are inmates that do better than others in taking advantage of
15 what is there. But in general, to the general population, there
16 is no psychological help at any institution for general
17 population inmates at this time. None that I'm aware of.

18 I've done over 600 of these hearings, and I do --
19 I did one today. I was in Salinas Valley this morning. I jumped
20 in my plane, flew up here to make this hearing.

21 But that's not the fault of the Commissioners.
22 That's just the way -- the way it is.

23 I think that the state has a duty to provide
24 that, but I understand it's a budgeting issue. And if you talk
25 to the inmates, it's because the correctional officers got the
26 money. I don't know about that, but I can tell you the money --
27 the programs simply aren't there.

28 I believe that there is an affirmative duty for

1 the state to provide that, and they're not doing that. But
2 that's a legal issue that's being litigated.

3 SENATOR ASHBURN: I have a question.

4 Is it your contention that an inmate who
5 completes a check list of requirements must be granted a parole,
6 just because they have completed a list and met a series of
7 criteria?

8 MR. SCHMIDT: Senator Ashburn, there has to be --
9 Penal Code 3041 says, if the inmate no longer poses an
10 unreasonable risk of danger to society.

11 One of the issues that is always considered is
12 the commitment offense itself.

13 SENATOR ASHBURN: Or perhaps the suitability of
14 the individual in meeting that standard.

15 So, your answer suggests that it isn't just, as I
16 thought I heard you earlier testify, that the inmate has
17 performed items one through thirty-seven, and therefore has met
18 the criteria.

19 The statute says no longer poses. Now, somebody
20 has to make a determination.

21 MR. SCHMIDT: Senator Ashburn, you've got trained
22 psychologists that are PhDs, that are paid by this state to go
23 in and do a psychological analysis. You get these reports not
24 just one year, but we'll have them over a ten-year period, or
25 more: The inmate no longer poses an unreasonable risk,
26 according to the psychologist.

27 You'll have all of the self-help and therapy
28 completions of this inmate, laudatory chronos from staff.

1 You'll have an absence of 115s, these are serious rules
2 violations; an absence of 128s.

3 So, all of this information that comes in to this
4 two, two-and-a-half hours, sometimes three-hour hearing, all of
5 this information that comes in is positive. Everything.

6 The Commissioners meet with this inmate. The
7 only thing that's negative: the crime, and perhaps how they
8 came across in that meeting. I don't know what else it could
9 be.

10 SENATOR ASHBURN: But isn't it ultimately the
11 Commissioners' duty, it's their sworn oath, to use their best
12 judgment, all other factors being considered, all other
13 professional evaluations being contained in the file?

14 MR. SCHMIDT: Yes, Senator, I would agree with
15 that. However --

16 SENATOR ASHBURN: Are these two individuals
17 capable of making that determination and doing so fairly?

18 MR. SCHMIDT: Commissioner Martinez is the only
19 one I can speak to, and I believe Commissioner Martinez is a
20 hard working ex-law enforcement individual. I've seen him work
21 until 8:00 o'clock at night on one hearing that I was there.

22 But Mr. Martinez, and he stated that when he came
23 up here, he stated, "I'm always looking out for the victims of
24 violent crime." He stated that when he came up here and
25 introduced himself.

26 That's not the type of individual that should be
27 making parole decisions.

28 SENATOR ASHBURN: You also said that he was, I

1 think -- my words; maybe not yours -- disrespectful and rude.

2 MR. SCHMIDT: Yes, sir.

3 SENATOR ASHBURN: I've talked with this gentleman
4 privately. I've watched him here, the way that he has handled
5 questions. The questions have not been easy.

6 There's nothing that strikes me of being
7 disrespectful about this man.

8 So, would you describe for me what took place
9 that you interpreted to be rude and disrespectful?

10 MR. SCHMIDT: I can tell you that Commissioner
11 Martinez is cordial, friendly to me outside of the hearing room,
12 just like he is to this Committee.

13 I can tell you that he treats inmates and handles
14 himself in those hearings differently.

15 I invite you to read a transcript or two that
16 I'll provide. I can tell, you'd like a specific example.

17 In one of my hearings, I tried to -- he was
18 reading the decision and stated that the psychological report
19 was in conflict because the psychological report stated that my
20 client was moderate risk, but yet recommended her for parole.
21 And I'm paraphrasing.

22 And I said, "Excuse me, Commissioner. Excuse me,
23 Commissioner."

24 He shushed me and said, "I'm reading the
25 decision. It's not your time."

26 I said, "Excuse me. Excuse me. The
27 psychological report says that she's a low risk."

28 I believe the comment was, "Mr. Schmidt, let's

1 look into that."

2 And looked into, and it was of low risk. And
3 then he just went on with the decision, just went right on with
4 it. We didn't have a recess or anything.

5 SENATOR ASHBURN: Was that rude or disrespectful?

6 MR. SCHMIDT: In the context of this hearing, it
7 was.

8 SENATOR ASHBURN: He heard your interruption. He
9 took into consideration that what he had just read or stated was
10 contradicted by what you pointed out.

11 I mean, the question for me is, are these two
12 individuals competent, qualified, fair?

13 And I mean, you've got to give me something more
14 than that, because they certainly have not demonstrated the lack
15 of those qualities.

16 MR. SCHMIDT: Senator, I had two other phone
17 calls today that I'd be glad to supply you the telephone
18 numbers. That's all I can do.

19 SENATOR ASHBURN: That doesn't help me. I mean,
20 we're in a hearing. This is the time for testimony.

21 I mean, I get phone calls, too. But if somebody
22 has something to say to us that is evidence that these two
23 individuals should not be confirmed, I need to hear it.

24 MR. SCHMIDT: I can tell you about another
25 hearing that was held as the result of a court order, in re:
26 Wider.

27 This -- it doesn't have anything to be -- to do
28 with being disrespectful. It has to do with another reason that

1 I think Mr. Martinez is not qualified.

2 The court order specifically said that the Board
3 was not to find Mr. Wider unsuitable for reasons of the
4 commitment offense or the fact that there were multiple
5 victims.

6 And in fact in the end, in the decision,
7 Commissioner Martinez specifically found those to be two factors
8 that my client was unsuitable.

9 I went to the Attorney General. I wrote him a
10 letter. I explained the situation to him, and he agreed.

11 The decision was reversed, and now we have to
12 have another hearing.

13 CHAIRMAN PERATA: Thank you.

14 Anyone further, opposition?

15 Okay, hearing none, pleasure of the Committee?

16 SENATOR ASHBURN: I'll make a motion.

17 CHAIRMAN PERATA: We have a motion to confirm.

18 Let me just probably restate some of the things
19 that I've already said, but that's something I really do well.

20 As part of the whole rehab system, it is, I
21 think, imperative that lifers be included as an active part of
22 the discussion and the programing. That's part of the reason
23 that Mr. Monday, I found his testimony encouraging.

24 We can all stipulate that you wouldn't be a lifer
25 unless you've done something really bad. And I am sure that
26 there are many people -- in fact, I know a few of them -- who
27 once in, should never be let out.

28 But there's also a question of the possibility

1 and prospect for redemption. And I don't know that I believe
2 that as a humanist, or as an article of religious faith, but I
3 believe it.

4 And I guess if you wanted to go to the freezer,
5 get the box model, it would be Reverend James Trammel, who is in
6 my district. He was convicted as a young man of a crime, a
7 murder. And circumstances were such that he was deemed at the
8 time, even though he was a relatively young man, to be a
9 danger.

10 He, in prison, studied and became an Episcopal
11 minister. He's out now. He's married. He's got a couple of
12 children. I mean, he's living proof that redemption is not
13 something that you just read about in the theology manuals.

14 I believe a lot of the responsibility really
15 falls to the Governor. It's not wasted on me that paroles are
16 granted, and then the Governor revokes the parole, or whatever
17 the technical term is.

18 It's also not lost on me that the Parole Board,
19 Parole members, no disrespect intended here, are of a kind and a
20 type.

21 Now, the Governor, one of the things that we said
22 in our letter was, we would like to see people on this Board
23 reflect more of what California looks like. Congratulations.
24 You both do. And it's a hell of a burden to carry around, so we
25 did ask that.

26 But it's kind of like the second half of the
27 sentence wasn't read.

28 So, we're going to continue to try to prevail

1 upon the Governor that, you know, a minister, or a rabbi,
2 somebody that's in the professional business of redemption maybe
3 should get appointed.

4 I don't think people who believe in redemption
5 are necessarily weak sisters, or people whom you can get over
6 on. You know, I'm sure that there's some real hard asses that
7 have reverse collars on. As a matter of fact, I know a number
8 of them. They're dead. They tried to teach me. Of course,
9 there are some that are in jail.

10 [Laughter.]

11 CHAIRMAN PERATA: But I'm going to vote to
12 confirm.

13 But I want to just ask you as strenuously as I
14 can, this is a complicated thing, but do your part. Do as much
15 as you can to abide by the law, given the fact that, as
16 Mr. Miller said, we ain't giving you all that you need. And I'd
17 be the first one to recognize it.

18 And if an inmate does not have adequate programs
19 to meet the requirements and the standards established, that is
20 on us. We can't blame anybody but those five of us sitting
21 here.

22 And it's very difficult when you put \$2 billion,
23 as we have this last two years, into our prison system, and you
24 all probably, the people you talk to got a buck-eighty of it.
25 So, I don't want you to have more responsibility than you have
26 authority, but I'm sure you get the point.

27 So with that, I would ask you to call the roll to
28 confirm.

1 SECRETARY WEBB: Cedillo. Dutton.

2 SENATOR DUTTON: Aye.

3 SECRETARY WEBB: Dutton Aye. Padilla.

4 SENATOR PADILLA: Aye.

5 SECRETARY WEBB: Padilla Aye. Ashburn.

6 SENATOR ASHBURN: Aye.

7 SECRETARY WEBB: Ashburn Aye. Perata.

8 CHAIRMAN PERATA: Aye.

9 SECRETARY WEBB: Perata Aye. Four to zero.

10 CHAIRMAN PERATA: Congratulations.

11 [Thereupon this portion of the

12 Senate Rules Committee hearing

13 was terminated at approximately

14 4:22 P.M.]

15 --ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of June, 2007.

Evelyn J. Mizak
EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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BOARD OF PAROLE HEARINGS
P.O. BOX 4036
SACRAMENTO, CA 95812-4036



June 1, 2007

The Honorable Senator Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Chairman:

I received your recent letter, regarding the date and time of my confirmation hearing and the list of questions. I appreciate the opportunity to share my goals, cite my accomplishments to date, and to respond to questions about Board of Parole Hearings (BPH) operational issues. For clarity purposes, I will respond by stating your question in bold print, then providing the response.

Statement of Goals

- 1. What are your goals and objectives as the Executive Officer of the Board of Parole Hearings (BPH)? What do you hope to accomplish during your tenure? What would you cite as your accomplishments to date? How will you measure your success?***

My goals and objectives are as follows:

- Establish systems to ensure quality control and monitoring the process to ensure fair and impartial hearings;
- Recruit, train and retain staff - ensure compensation commensurate with the responsibilities and expectations;
- Maintain a positive and safe working environment for the dedicated staff and Commissioners of the BPH;
- Augment training/education program of hearing officers and hearing staff to enhance consistent application of the statutes and regulations through distance learning;
- Work collaboratively with California Department of Corrections and Rehabilitation (CDCR) on joint responsibilities to resolve any issues related to the hearing processes;
- Meet with internal and external stakeholders more frequently for input;
- Work with CDCR Office of Legal Affairs to assist them to justify additional legal staff to commence routine decision review of randomly selected parole suitability hearing decisions.

During my tenure I hope to accomplish the following:

- Have accessible a trained Bench of Commissioners (similar to civil service Retired Annuitants) to backfill Commissioner vacancies;
- Have a third-party contractor to provide legal representation in the parole suitability hearing process, similar to the California Parole Advocacy Program (CalPAP) model to recruit, train, certify, schedule and monitor for effective representation;
- Establish comparable compensation schedules for representation of inmates at parole suitability proceedings and parolees in revocation proceedings;
- Maintain substantial compliance to bring a conclusion to the court oversight in *Valdivia v Schwarzenegger*;
- Achieve compliance to bring a conclusion to the court oversight in the *Lugo v Schwarzenegger* (formerly *Rutherford v Schwarzenegger*);
- Implement efficient and enduring remedy to the issue of errant packets, expand the electronic pilot project to include on-line or electronic lifer case packet review for parole suitability proceedings;
- Increase the accessibility for video conferencing hearings.

During my tenure, my administration has realized the following accomplishments:

- In collaboration with the CDCR Enterprise Information Services, BPH wrote a justification for, and ultimately secured funding for, the establishment of the Lifer Scheduling and Tracking System (LSTS). The feasibility study approval process, finance review, and the contract process have been completed and the project delivery is on schedule ;
- Substantial compliance in the *Valdivia v Schwarzenegger* with both timeliness and the procedural due-process requirement steps;
- Implemented a process to incorporate consideration of remedial sanctions, when appropriate, as opposed to returning parole violators to custody without treatment pursuant to *Valdivia*;
- Established the new Forensic Assessment Unit for psychological evaluations which determined research-based standards for psychological evaluations and the recruitment, hiring, training, certification and deployment of professional clinical staff;
- Acquired and successfully installed new digital recording equipment in all institutions where parole suitability hearings are conducted. Staff and hearing officers were trained in the operations of the new equipment. The sound quality is far superior to the old system;
- Established a more timely and responsive transcription service through the use of different vendors; as a result, the BPH has improved on the quality and timeliness of transcription of hearing documents;
- Secured a contract through Certified Personnel Services (CPS) to conduct a workload study of the parole suitability and parole revocation hearing processes;
- Revised and enhanced Commissioner/Deputy Commissioner Training Modules;

- Increased BPH staffing with 183 new staff at all levels; bringing staffing level to 534, despite the inherent challenges of such a dramatic staffing increase;
- Increased staff size and revised the procedures of the Sexually Violent Predator (SVP) Unit in compliance with Proposition 83, also known as Jessica's Law;
- Reestablished the Inmate Appeals Unit, established the Unit's procedures, the Commissioners adopted proposed text for regulatory language;
- Established the Disability and Effective Communication (DEC) tracking system, which is an interactive data base that tracks inmate need for reasonable accommodations and need for effective communication assistance in hearing processes;
- Reduced the Parole Suitability Hearing Backlog from 2,600 in October 2005 to 553 in April 2007;
- Established open dialogue and have been receptive to input with all stakeholders.

Success and progress are monitored through affirmations of staff and stakeholders, our routine statistical reviews, and personal knowledge of doing the right thing for the right reason.

2. *The July 2005 reorganization of the California Department of Corrections and Rehabilitation (CDCR) changed the roles of the Chair and the Executive Officer of the Board of Parole Hearings. According to statute, the Executive Officer is the administrative head of the Board. How do your responsibilities differ from that of the Chair of the Board? Please explain both roles with respect to specific responsibilities, such as supervision of staff, training of commissioners and deputy commissioners, scheduling, budgeting, policy development, and quality control of hearings.*

The statutes specifically define the Executive Officer and the Chair in Penal Code (PC) §5075(c). The Executive Officer appointed by the Governor, subject to Senate Confirmation, functions as the administrative head of the Board to exercise all duties and functions necessary to ensure that the responsibilities of the Board are successfully discharged; the Chair shall be designated by the Governor.

Since the July 1, 2005 reorganization, the Chair's functions and responsibilities, as follows, have continued to evolve:

- Chairs board proceedings developing, interpreting and implementing laws, regulations, rules and procedures governing life inmates;
- Presides over formal board proceedings, both in open meeting and closed sessions;
- Training and development of new Commissioners;
- Consults with Governor's office on emerging parole suitability hearing litigation issues;
- Conducts parole suitability consideration and other adult offender hearings;

- Meets with Secretary of CDCR along with Executive Officer to discuss on-site case preparation and processing issues\represents board at meetings and forums focusing on life hearing matters with various stake holder groups;
- Review Commissioner assignments and hearing schedules.

As the Executive Officer, it is my responsibility to manage the day to day operations of the Board. All Board Division Chiefs report to the Executive Officer including hearing operations (over 100 civil service Hearing Officers and supervisory staff engaged in Parole Suitability and Parole Revocation functions statewide); Administrative Services (personnel, budgets, fiscal, business services, information technology, management information systems, training); investigations (clemency, pardon, compassionate release, intimate partner battering, parole plans, etc.); hearing support (scheduling, quality control, correspondence, appeals, etc.); forensic assessments (clinical psychological evaluations, SVP, Mentally Disordered Offender).

Additionally, I functionally direct a senior attorney and legal staff who provide support, advice and counsel to the Board. In conjunction with the Chair, I ensure that Hearing Officers receive education and training prior to commencement of their duties. I work closely with CDCR Office of Legislation on legislative issues. I am the principal liaison for the Secretary and Undersecretaries on shared responsible of the Board and CDCR. I consult routinely with the Chair on Board hearing issues and other pertinent matters.

At full strength, the Board hearing officers include twelve Governor appointed Commissioners, including the Chair, and ninety-four civil service Deputy Commissioners (DC).

Working closely with the Board Chair, a thorough and responsive training curriculum has been developed for the appointed Commissioners. This program involves both classroom learning and practical experience, including participation in mock hearings and on-the-job training in the field. The classroom learning is facilitated by experienced staff from BPH and CDCR. This training is designed to provide a strong foundation on which to build the expertise that a Commissioner is expected to hone further through experience. The practical training establishes this base and provides the skills necessary for success. The curriculum development and training unit functions are under the responsibility of the Executive Officer, and I execute those duties with the input I receive from the Chair. The Chair participates in a post-review through direct observation of the hearings.

The DCs participate as panel members at Parole Suitability Hearings and also conduct nearly 100,000 actions regarding alleged parole violations. As such, the training program for DCs differs from that of the Commissioners. The Chief Deputy Commissioner and his experienced staff of Associate Chief Deputy Commissioners (ACDC), present an extensive training program for newly appointed DCs. This training program is often referred to as the Deputy Commissioner Academy. This program is fully responsive to the education and training needs of our DCs as we prepare them to participate in Life Parole Suitability

Hearings and also to take part in parole revocation proceedings. This training program draws on the considerable expertise of supervisory DCs, the ranks of which are comprised of exceptionally well-prepared individuals with varied backgrounds in law, law enforcement and corrections.

The training evaluations prepared by the participants in the Commissioner Training Program and the Deputy Commissioner Academy consistently reflect the high praise of the participant trainees.

The scheduling and deployment of staff to cover both Parole Suitability Hearings for life prisoners and Revocation Proceedings for the adjudication of parole violation allegations is a difficult and complex process; not unlike scheduling Committee Hearings in the Legislature. Both require the consideration of numerous factors and routinely require a system of triage involving constant decisions regarding prioritization, postponements and cancellation. Currently, scheduling is a partially manual and partially automated operation. With the implementation of LSTS in November 2007, case scheduling will be greatly enhanced.

See the response to question number 4 in regard to additional quality assurance practices.

Parole Suitability (Lifer) Hearings

In 2006, the Board of Parole Hearings scheduled almost 7,000 lifer hearings. Of these over 80% (5,866) were subsequent hearings, which means that it was not the inmate's first parole eligibility hearing. Based on information from your office, each year an additional 500 inmates typically reach their minimum eligible parole date and this number is anticipated to rise in the coming years as the "three strike" cases begin to reach parole eligibility in increasing numbers. As a result of the Rutherford lawsuit, the Board of Parole Hearings was found to be in violation of the law by failing to hold timely parole suitability hearings for inmates with an indeterminate life sentence. By law, inmates are entitled to have their suitability for parole considered at regularly scheduled hearings. The hearing "backlog" includes an accumulation of cases that were not held as required by law.

Over the past several years there have been many discussions about the definition of the backlog. A July 2005 report by the Office of the Inspector General concluded that "the statistics the board reports on lifer hearings are misleading." As recently as April 2007, a status report filed by the state in the Rutherford case acknowledged that "the board has recently learned that the manner in which the institutions have been calculating the backlog has varied, in some cases, from institution to institution."

3. ***Please describe how the board is currently calculating the backlog as well as any proposed changes to this method. Using clear definitions, please explain the current status of the backlog, the expected timeframes for its elimination, and the system you will use to monitor progress.***

The *Rutherford/Lugo* Superior Court case (Marin County) at its foundation is about "timely" Parole Suitability Hearings for inmates serving sentences of life with the possibility of parole. This was a year after year challenge for the parole authority for multiple reasons that are not now important to recount. However, it is important to note that the number of cases coming in continues to escalate. Of significant note is that in 2005, there were 4,953 Parole Suitability Hearings scheduled. As specifically intended and designed by the reorganization bill, the adult board Commissioner positions increased from 9 to 12, which enabled the board to schedule 6,954 hearings; over 2,000 more than the year before. Throughout the period, the board has been addressing the court in relation to the hearing backlog; there have been differences of opinion as to the specific definition of a backlogged case. Among these have been board definitions, institution definitions (various), Inspector General definitions, and plaintiff's definitions. Regardless of which definition is applied, all parties agree that the backlog has been significantly reduced. In October 2005, the backlog was reported as 2,600. As of April 2007, the Board reported a backlog of 553 cases.

The BPH's formula for defining the backlog provided for scheduling of all parole consideration hearings within the same calendar month that the hearing is due. If the hearing is postponed and not placed back on the calendar within 30 days of the date it was scheduled, then it is considered a backlogged case.

Ultimately on May 10, 2007, the *Rutherford/Lugo* Court determined in favor of the plaintiff's definition. The Court defined backlog, as one day late in deference to the Board's interpretation of a 30 day parameter. Therefore, we are working to implement full system compliance with the May 10, 2007, court backlog definition. Assuming that Commissioner staffing stabilizes at the current level (11 trained and deployed), we anticipate substantial compliance with the court mandate regarding the backlog by October 2007.

Consistent with this goal and to concurrently remedy the hearing notice timeframe errors which cause postponements, the BPH and the CDCR Division of Adult Institutions (DAI) are implementing a process whereby hearing notification and case review packets will be prepared and distributed 60 days in advance of the hearing. Additionally, an electronic real-time data base known as the Lifer Scheduling and Tracking System (LSTS) is scheduled to be operational in November 2007. This system will provide online capabilities for advance monitoring as to whether each documented component of the case review packet has been completed and incorporated in the packet, as well as providing the availability of real-time hearing outcome details. We are very excited about the prospects of this system.

- 4. *Have you researched the lifer and parole revocation processes used by other states? What have you learned about national best practices – not only in terms of reducing California's backlog, but also for issues related to training, policies, quality assurance, consistency, and/or oversight? What role does CDCR's office of research or policy analysis have in assisting you in improving your processes?***

To my knowledge, the BPH has not done research specific to parole suitability hearings for inmates sentenced to life with the possibility of parole. I have commenced a dialogue with the Association of Parole Authorities International (APAI) for comparable research data. There is clear intent to do more review and research in the areas of training, quality assurance and consistency, with assistance from the CDCR Research Office. As to parole revocation processes, the *Valdivia* Court and stipulated injunction specifically delineates the policies and procedures for hearing processes, timelines and provision of counsel. We have achieved high marks from the Special Master for our ongoing compliance with the court order. However, we continue to work with the CDCR Division of Adult Parole Operations (DAPO), CDCR Research, the Special Master, and *Valdivia* plaintiffs on ongoing best practices reviews of community based parole programs, remedial sanctions for non-violent parole violations, and a matrix decision making system.

When the Board receives analysis from CDCR Research, if this would require a policy change, the Board, as a public board, is subject to the Bagley-Keene open meeting act. As such, board policy revisions are presented to the Board in public setting and are enacted through the Office of Administrative Law as regulations. This process, while time-consuming, ensures full transparency and disclosure and an opportunity for review and input by all parties. Indicative of the ongoing dedication to improving our processes, there are numerous regulation revision drafts in the queue being developed by legal staff preparatory to being presented to the Board in public setting

Postponements of Lifer Hearings

While the number of scheduled hearings has increased over the past three years from approximately 4,500 in 2004 to almost 7,000 in 2006, over 30% of these hearings continue to be postponed each year. These postponements not only represent a loss of taxpayer dollars and an addition to the backlog, but they are also very inconvenient and costly for the victims, families, inmates, and attorneys who have prepared for the hearing and expect it to occur as scheduled.

- 5. Many of these postponements are the result of board members determining (the day of the hearing or shortly before) that the file is not complete. Who is responsible for ensuring that the files are complete and updated? If you are not responsible, please explain who is. What systems are being put in place to improve this situation? What progress should we expect in the near future? Please be specific.**

We overwhelmingly agree that the historic rate of postponed Lifer Hearings must be corrected; and we are confident that the multiple-remedy plan we have put in motion will substantially reduce the incidence of postponed hearings and correspondingly address the hearing backlog challenges. There is a shared responsibility spanning the Board and the Case Records staffing of the facilities where life prisoners are housed.

Currently, there is a unit at each institution whose responsibility is to determine which cases are due parole suitability hearings and they have a checklist of the materials, and documents necessary to accurately complete the hearing packets. Additionally, this unit's staff is cognizant of the time-frames in statute and regulations for preparation and delivery of packets. It has become obvious over the past year that the sheer hearing volume increase (4,500 in 2004 vs. 7,000 in 2006) has overwhelmed CDCR staff resources requiring emergency remedies including overtime and consideration of staffing augmentations.

Commissioners assigned to a particular institution get their copy of the case review packet approximately 10 days prior to the hearing. By that time, even when it is clear that documents are missing or incomplete, little can be done. The errors are typically due to statutory notice time-frames to inmates, counsel, and/or the District Attorney. Additionally, it is not uncommon that some packets get to participants intact, while on the same case, some other hearing participants receive packets bereft of essential documents. This challenge is typically not known until the day of the hearing. There are numerous variations of the hearing packet problem theme, yet we are addressing this, too, in several substantive ways:

- Commencing with cases scheduled in October 2007 packets will be prepared 60 days in advance. This will allow for quality control review, correction, and/or perhaps substitution of alternative cases;
- LSTS, the electronic Lifer Scheduling and Tracking System, which launches in November 2007, will provide real time online monitoring, access and review of case packets;
- The BPH and DAI continue to regularly review postponement issue and focus resources overtime and additional staffs support on the most significant challenge areas;
- The Administration and the Legislature provided clinical resources dedicated specifically to the psychological evaluation process for inmates serving sentences of life with the possibility of parole. As full utilization and implementation of these resources are realized, the heavy incidence of postponements for this reason will reduce substantially.

Currently the Board functions with 11 trained and case-assigned, appointed Commissioners, allowing near optimal (12 Commissioner Board) parole suitability hearing deployment. The hearing schedules for each institution are developed and planned at least three months in advance to allow for case preparation, notice to all parties etc. When the hearing logistics for 11 hearing panels are unexpectedly altered due to unavailability of any of the 11 Commissioners, then cases are, by law necessarily postponed for the corresponding length of the unavailability of the Commissioner. A Commissioner is typically assigned 16 cases per week so one can readily comprehend the exponential effect that unforeseen illness, injury, resignations etc. has on this facet of the overall postponed case ledger.

Since July 2005, there has been significant turnover of Commissioners. When one considers the length of time from appointment to start-date, in addition to the length of the training process of each new Commissioner, it is unavoidable and conceivable that at least 60 postponed hearings could result. As calendars are scheduled several weeks in advance, it is unavoidable to postpone hearings in these instances.

6. To the extent that hearings are postponed because of incomplete files or information that is not provided in a timely manner, how do you track these occurrences so you can identify if there are particular problems at certain institutions? How is this information conveyed to the department?

The BPH has an aging, yet still facile, management information system which captures among other things, postponement reasons and details. We meet routinely with and provide detail from these reports to the CDCR Undersecretary and the Chief Deputy Secretary, Division of Adult Institution to focus our efforts on the case review packet matters and other institution germane issues which cause postponements. Historically, the Board only maintained this data rolled up into one generic postponed hearing category. Recently, at my direction, we commenced retrieval of specific reasons for postponement and report this information in our computer statistics (COMPSTAT) reports. CDCR and DAI executive management have been attentive and responsive to these concerns.

Psychological Evaluations

One of the most common reasons for a postponed lifer hearing is the lack of a complete or updated psychological evaluation. For example, in December 2006, 28 percent of the postponements were related to an inadequate or incomplete psychological evaluation. To address this problem, the board has established an independent forensic assessment unit to conduct these evaluations, which will include a clinical interview, case review, a standardized risk assessment, and a diagnostic tool to identify psychopathic tendencies. Based on a letter you provided to the Rules Committee in March 2007, the psychological evaluations "will typically be considered valid for five years."

- 7. *The Rules Committee repeatedly has heard testimony about psychological evaluations that were too old to be useful, including evaluations that were less than five years old. Please explain when and how the board came to the decision that evaluations should be valid for five years. From whom did you seek advice on this and what did they recommend? Please be specific.***

From the beginning, a deliberate and cogent decision was made to let the clinical science inform us of the clinical best practices regarding selection of the most on point psychological evaluation instruments and the effective frequency of evaluations. The concept of the efficacy of completing the psychological reports every five years stems from specific research by qualified, credentialed clinical researchers and practitioners. The five-year psychological evaluation period of viability underwent three levels of review. The concept was first discussed by a consortium of experts. This panel convened to provide the BPH with guidance and clinical recommendations prior to the establishment of the Lifer Unit of the Forensic Assessment Division. The BPH Senior Psychologists then evaluated and researched the five-year period concept. Finally the BPH Psychologists submitted the issue for outside review which consisted of consultation with outside experts, including preeminent scholars, Dr. Jennifer Skeem from UC Irvine and most notably, Dr. John Monahan, University of Virginia. Neither of these two clinical research scholars offered substantive rationale for more frequent revisiting of the static factors.

All concluded that assessment of violence risk potential involves an evaluation of both static (historical) and dynamic risk factors. Risk assessment instruments are weighted heavily on static or historical factors, and are thus not subject to change. Therefore, submission of more frequent risk assessments (i.e., prior to five years) and clinical assessments is not likely to yield an abundance of new information.

Information on the inmate's more recent level of daily living and functioning within the institution does not require a new psychological report. Rather, such data can and should be, obtained through a review of the inmate's Central File (case report), with particular attention paid toward documentation of their institutional conduct and achievements since the time of the last BPH hearing, as well as the inmate's presentation before the board panel. In effect, such data serve as a marker of the dynamic factors.

In cases where the inmate is receiving mental health services through Correctional Clinical Case Management Services (CCCMS), or Enhanced Outpatient Program (EOP), more frequent psychological evaluations may be needed (i.e., prior to the five year period) to assess any changes in mental health status and psychological functioning as it relates to risk of future violence. To that end, the Senior Psychologists will review such cases, as referred by the individual institutions, and make a clinical determination as to the need for a more recent psychological evaluation.

As part of an overall program review, the BPH's Forensic Assessment Division (FAD), in conjunction with CDCR's research component will be evaluating the length of viability of the psychological evaluation. The research will inform the clinical goals of ensuring the reliability and validity of the five-year recommendation. After a period of review, if it is determined that more or less frequent evaluations are necessary, then this issue will be revisited and recommendations to amend the time frames will follow accordingly.

8. *Who is responsible for overseeing the new forensic unit? Please describe the quality control measures you have developed to ensure the timely, thorough, and competent completion of these evaluations. How will you ensure the clinical quality of their work?*

The BPH FAD consists of three units, the Mentally Disordered Offenders Unit, the Sexually Violent Predators Unit and the Lifer Evaluations Unit. The Division is headed by the Chief who is a career civil service employee with over 31 years of varied experience up through the ranks in the correctional field. He was a Deputy Commissioner and an Associate Chief Deputy Commissioner (ACDC), with the BPH before his current assignment as Chief of the FAD. The Chief is part of the BPH management team and reports directly to the Executive Officer. His institutional, supervisory and managerial experience provides him with a diverse background and has established a solid foundation in which to lead the FAD. He, along with Chief Psychiatrist was involved in the interviewing and selection of the Senior Psychologists and subsequently was involved, in conjunction with the Sr. Psychologists, in the selection of the staff psychologist cadre. To be certain, the Chiefs' role is to administer the day to day process of the three unit function. He does not become involved in the clinical assessment process. That is appropriately the province of the clinical professionals.

The two Senior Psychologists report directly to the Chief of the FAD. The FAD has been divided up into two regions, with each respective region overseen by a Senior Psychologist (Northern region, Dr. Steven Walker; and Southern Region, Dr. Jasmine Tehrani). The Senior Psychologists supervise a staff of 17 psychologists, as well as a cadre of independent evaluators performing psychological evaluations on a contract basis. These psychologists, travel to the various CDCR institutions which house the inmates subject to Parole Suitability hearings, review case files and conduct the psychological interviews. Periodically, the Senior Psychologist will personally observe the independent psychologists during the clinical interview process to insure consistency and quality control.

Initially, to ensure the validity of the psychological reports and for quality control purposes, all psychological reports, including those performed by contract psychologists, are reviewed and co-signed by the Senior Psychologists. This is particularly critical during the initial phase of implementation. After a period of demonstrated consistency for content inclusion and uniformity of report format, the Senior Psychologists will commence a process of randomly sampling psychological reports for review.

9. *What training did the commissioners and deputy commissioners receive regarding the new process for psychological evaluations and the new tools included in the evaluation? Please be specific.*

In February 2007, the FAD Chief and BPH Senior Psychologists of the forensic assessment unit provided a training session to the Commissioners. The topics included an overview of violence risk potential and dangerousness, the goals of FAD and background, the actuarial risk assessment instruments, and the new report format. The primary goals of the training were to familiarize the Commissioners with the risk assessment instruments, describe how such findings are incorporated into the report and help guide and instruct the clinical opinions which emanate therefrom, and present and describe the new psychological evaluation report format. Additionally, all Deputy Commissioners received similar training and orientation in the new format and process in conjunction with their semi annual training in March and April 2007.

10. *There is currently a backlog of outstanding psychological evaluations. Please describe your plan for eliminating this backlog.*

Using a two-pronged approach, the FAD's full time and contract psychologists perform psychological evaluations on inmates designated as needing such. These cases are then able to be placed on calendar for a parole suitability hearing. In addition, the FAD psychologists will review the requests for new psychological evaluations and determine whether an updated report seems warranted. Existing psychological evaluations conducted by clinicians other than those functioning under the auspices of the new unit are reviewed for content and structure by the Sr. Psychologist who may endorse, provide needed addendum, or recommend new psychological evaluations. The entire process, described in my previous responses to question numbers seven, eight, nine and ten, since inception, has been designed and intended to be fully evaluated through a structured scientific research and review process at appropriate intervals.

Stipulations

In addition to the large number of hearings that are postponed, over 20 percent of the board's denials is the result of a stipulation, in which the inmate "voluntarily" agrees to postpone his/her hearing on the grounds of unsuitability for parole. By declaring himself unsuitable, an inmate takes himself out of consideration for one to five years because he believes he is not ready to be reviewed.

- 11. In 2006, there were over 1,000 stipulations, compared to 716 the year before. Prior to 2000, there were less than 100 per year. What do you believe accounts for the dramatic increase in stipulations? Do you track the reasons? Has the policy or training with respect to stipulations changed over this time period?**

For the past 5 years (2002-2006) the incidence of stipulations to denials of parole has remained fairly constant at 20.3% to 23.4% of the total parole denial decisions. The big change from 2006 (1,000 stipulations) to 2005 (716 stipulations) is based on the fact that there were over 2,000 more hearings scheduled in 2006 than in 2005; yet the percentage of stipulations was nearly statistically identical (23.4% to 23%). Based on this most recent 5 year review, there is no dramatic increase in the rate of stipulations.

Certainly to go back several years, you would, for example in '98 and '99, find pluralities and percentages much different:

- 2001 – Denials: 3,098; Stipulations: 554 (17.9%);
- 2000 – Denials: 1,873; Stipulations: 246 (13.1%);
- 1999 – Denials: 1,827; Stipulations: 62 (3.4%);
- 1998 – Denials: 2,047; Stipulations: 58 (2.8%);

I do not know what accounts for those differences and unfortunately the BPH's database does not capture reasons for stipulations for parole denials. However, historically the leading reason for such stipulations has been recent rule violations/infractions. The training that we do today in this area, and have done since July 2005, has been consistent, with the lone exception that since July 2006, per *Rutherford/Lugo* Court order, all postponements and stipulations (done by Commissioners/Deputy Commissioner panels) are committed to be taped recorded with a prepared transcript.

Appeals Unit

Last year the board proposed to reestablish its Adult Offender Appeals Unit.

- 12. Please describe the purpose of this unit, including the estimated number of appeals and proposed level of staff review. Who will conduct these functions? How will you ensure the efficiency of this unit? Specifically, how will you track its performance?**

The purpose of the unit is to provide a viable, effective, and swift avenue of redress for inmate concerns regarding life parole suitability hearing issues. The BPH's appeals unit will maintain a database to:

- Log and monitor appeals received;
- Track response time;

- List type/category of the appeal;
- Source of the appeal
 - Institution
 - Headquarters
- Track number of Grants/denies;
- Return responses to inmates/attorney

The unit will be headed by a Staff Services Manager (SSM), and staffed with Associate Governmental Program Analysts (AGPAs) and Office Technicians. The AGPAs will prepare draft responses using a database comprised of similar appeals/responses developed from the Boards' prior appeals database. The AGPA will forward the draft response to the SSM. The SSM will review, sign and forward the draft response to an Associate Chief Deputy Commissioner (ACDC) in headquarters operations. The ACDC will review, respond and sign, and as appropriate, due to defined legal issues, elevate some appeals to the BPH legal team for review and response. The last full year in which the BPH had an appeals unit was in 2003. During that period; the BPH received 768 appeals from life term inmates. This represents approximately 17% of the total 4,499 parole suitability hearings scheduled. In 2007, the BPH will schedule approximately 7,000 hearings and if the BPH receives an equivalent ratio of appeals to scheduled hearings, 17% of the 7,000 parole suitability hearings scheduled, is approximately 1,190 appeals.

Parole Revocation Hearings

Parole revocation hearings are conducted by deputy commissioners. In 2006, there were over 80,000 probable cause hearings and over 17,000 parole revocation hearings. In general, this process is governed by the Valdivia lawsuit which requires the state to address certain due process and other violations.

- 13. Although the parole revocation decision is made by a deputy commissioner assigned to the hearing, there is a process by which these decisions can be reviewed and amended. Who within BPH has the authority to change a deputy commissioner's decision? Who has the ability to request a review? How frequently does this happen? Under what circumstances can a deputy commissioner's decision be modified? The Valdivia lawsuit removed the appeal process for parole revocation decisions. How is this review different than an appeal process?**

An Associate Chief Deputy Commissioner or above, has the authority to act on and/or conduct decision review of a DC parole revocation decision, pursuant to California Code of Regulations (CCR). Changes to the DC determination in decision review, by regulation, are limited to errors of fact or law. Recently CDCR, DAPO and the BPH worked together to develop a better system for the organizations to facilitate response to DAPO generated decision review requests to the BPH. The BPH similarly responds to requests for case review

from other stakeholders in the process, including parolee attorney representatives, victims/victims advocates, law enforcement representative and/or parolees. While not an appeal, per se, it could be labeled such with the significant difference being that this decision review process operates on a ten day time frame commencing with the date of the hearing. The defining decision review standard does not restrict legitimate discretionary decision of the DC, but rather determines and provides appropriate redress where there is an error of fact or law that the DC either overlooked or perhaps could not have known about. When a decision review issue has merit, and has potential consequences for the parolee, typically the remedy is an immediate rehearing.

14. Do you track consistency in revocation decision? If so, please explain this process.

I have directed the ACDCs, who each supervise 10-12 DCs, to review the decisions of their subordinate DCs to ensure consistency with regulatory guidelines. They are expected to address issues of non-compliance and training needs in the employee performance and probationary reports. It is expected as a normal course of their supervision. The ACDCs do this utilizing random review from the revocation database and direct observations. The product of the appeals process and the quality control review process is another tool used for monitoring consistency and training needs.

Coordination Between the Board and Department

There are a number of issues related to coordination between the board and the department where it is not clear who bears the ultimate responsibility for these issues.

15. Please help us clarify who takes responsibility for the following: Ensuring that the proper individuals are noticed prior to a hearing; ensuring that complete files are submitted on time to the board members and attorneys; ensuring that the inmate has had a chance to review his file prior to the hearing, as required; ensuring that ADA assistance is available prior to a hearing as well as at the time of the hearing; ensuring that information related to inaccurate data in an inmate's file is translated to case records; ensuring that all necessary equipment is available and ready for use at the time the hearing is scheduled to begin?

The BPH and CDCR DAI have a shared responsibility to facilitate a parole suitability hearing for an inmate sentenced to life with the possibility of parole. As the legal custodian of the correctional files, the case records staff function of the institution currently has the responsibility to determine when an inmate is eligible for hearings, to review the file for necessary documents and to develop the case review file.

Staffing at the housing institution, colloquially known as the "Board Desk" which is typically comprised of a Senior Correctional Counselor and a clerical employee, has the responsibility in conjunction with case records staff, to timely send out the completed case review packets to the attorneys and to the BPH. The housing institution also coordinates the ADA accommodations. Similarly, the initial board room set up and preparation is a function of the "Board desk". Clearly this process is not all that it needs to be. Recruitment and retention is an ongoing problem. Training is a key issue. Certainly the quantum increase of over 2,000 more hearings scheduled has additionally burdened an already challenged staff. The Board has worked closely with the DAI to develop justifications for case records resources and classification structure that will address some of the staffing issues. Systematically, moving the case review packet preparation process out to 60 days in advance of the hearing, scheduling attorneys 120 days in advance of the hearing, and the advent of the LSTS, with its ability to electronically monitor case preparation documentation, will provide significant remedy. Additionally LSTS is designed to provide an online version of the Board hearing decision, which is currently a multi-copy NCR paper hand written document which along with the Board's decision, also contains specific Board observations, requests, directives for the next hearing etc. The LSTS database will elevate attention and promote compliance and provide a new level of monitoring of Commissioner/DC hearing directions/recommendations.

There appears to be some degree of disconnect between the institutional staff at the facility who prepare and distribute the case documents and the Board packets, and the internal institutional oversight of that process. Previously, a case was made for additional Board analyst positions whose sole role would be to monitor and ensure case preparation compliance. These staff would be deployed regionally. In that manner, the Board would have not only the responsibility, but the resources to forge compliance. In light of continued issues, there are current discussions to rekindle those thoughts.

16. *Who is responsible for following up when something goes wrong in one of the areas discussed above?*

When the BPH becomes aware that case hearing timeliness is compromised, whether within the hearing day, the week, or by detail from monthly hearing statistics, it is our responsibility to follow-up and assess what occurred and why and determine how to fix it. As discussed in this document we have remedies underway to mitigate every one of the challenged areas before us.

Policy, Training and Quality Control

The Board of Parole Hearings is governed by Title 15 of the California Code of Regulations, yet, changes occur in law and/or court decisions that affect the board's proceedings.

- 17. What should the Legislature expect from board members and deputy commissioners regarding consistency in hearings? Should we expect that various factors are weighed similarly? Should we assume that denials or revocations are applied consistently? Whose job is it to examine hearings for consistency?**

The Legislature, the public and all percipient parties should expect that hearings conducted by the Board are derived from consistently provided training in terms of knowledge of application of statutes, regulations, guidelines and emergent court orders. The Legislature should expect that the Board panel members review each case on its individual merits, considering all relevant and material information and the various case factors. When applying their individual discretion and arriving at a conclusion, it is expected that the Board panel will appropriately document and justify the decision. This process is typical whether it is a parole suitability or parole revocation proceeding.

It is very unlikely that over 100 parole board hearing officers would consistently arrive at the same conclusion. So, whether the hearing result is a denial or revocation of parole, or indeed, dismissal of parole violation allegations or parole grants, the reality is different hearing officers will see things differently at times, just as judges and legislators do. The expectation is that the application of the procedural laws and guidelines and facts of the specific case are considered and a reasoned and justified decision is documented on the record.

The ACDCs randomly monitor the hearing performance of DCs under their supervision to ensure that policy and procedure is followed. Additionally, when specific case hearing questions arise whether through decision review or independent reporting, the ACDC is the initial reviewer. While rare, as necessary, the case review may be elevated through the Chief Deputy Commissioner, to the Executive Officer.

Consistency of application of procedure is the foundation upon which the hearings are measured. Commissioners are designated as chair of parole suitability proceedings and are provided the necessary education and training to succeed in that role. Whether perceived problems are presented either through monitoring reviews, decision review, defense counsel inquiry, Commissioner / DC questions, CDCR staff inquiry, DA or Victim advocacy inquiry, or inmate inquiry, the Board reviews the issue and responds.

- 18. The Rules Committee has asked repeatedly who monitors hearings to ensure that board members, especially in their early months, conduct hearings in accordance with all policies and regulations. You have told Senate staff that the Board Chair performs this function. Please describe this process. Whose job is it to examine hearings for consistency? Please explain how this is achieved.**

As often as the hearing calendar allows, the Board Chair is scheduled off calendar to allow an opportunity to review and monitor parole suitability hearings conducted by Commissioners/Deputy Commissioners. To better prepare, the Chair has met and discussed hearing matters with former Commissioners, veteran Deputy Commissioners and legal counsel to develop even greater insight to the hearing process than his Board training and his subsequent presiding over hundreds of hearings has provided. Clearly, this is an appropriate role for the Chair as he has been appointed to the level of authority in the organization in relation to his peer Governor appointees and has the validation and acceptance gained from walking in their same footsteps. As the case hearing backlog subsides and Commissioner availability levels off (as now) there are more such monitoring assignments planned.

19. *How are board members and deputy commissioners notified when there is a change in law or a court decision that affects board proceedings? Please explain how these changes are conveyed to board members and deputy commissioners and explain how the updated practices, procedures, and guidelines, i.e., those that are not included in Title 15, are maintained on an ongoing basis?*

I worked with BPH legal staff to implement a formal process for legal updates, which historically had been inconsistent and intermittent. With the newly installed process, the legal staff informs the Commissioners of changes in law or court decisions affecting Board proceedings during new Commissioner training, training sessions conducted in conjunction with the Office of the Attorney General, and during monthly Board meetings, as appropriate, under the Bagley-Keene Open Meeting Act. As Commissioners are tasked with specialized hearings such as Penal Code 3000.1 and rescission hearings, they are individually trained on the appropriate standards. Court decisions or orders that immediately affect specific hearings are tracked by legal staff and an attorney is assigned to ensure the hearing panel is appropriately informed about the terms of the pertinent order or decision. Legal also provides an attorney assigned to serve as "officer of the day" to be available to answer any questions that the panels may have regarding the status of the law or court decisions affecting the hearings. Changes in law or court decisions that affect parole suitability proceedings are incorporated into the training material and periodic refreshers and updates are given to the Commissioners.

Similarly, DCs receive ongoing updates of law changes and/or court decisions in their semi-annual training and via direct voicemail/e-mail from their chain of command. Additionally, DCs have access to the legal "officer of the day" through the presiding Commissioner of the parole suitability hearing panel. Changes in the Valdivia procedures as a result of law or court orders are conveyed through broadcast voicemail, e-mail and written directive. Such issues are incorporated in subsequent DC training.

20. *The use of multi-year denials in lifer hearings seems to vary significantly across commissioners. Are all members and deputy commissioners expected to follow similar guidelines or policy? What is the policy?*

After a determination of a denial of parole is made the issue of the length of the denial of suitability must be addressed.

During the initial training of newly appointed Commissioners, specifically in the "mock" hearing training module, using a mock up case, Commissioners are trained to focus on positive and negative factors and to give all factors appropriate weight. While the weight given to each factor is within the discretion of the individual Commissioner, the Commissioner is instructed to document their conclusions with participants.

It is strongly advised, that the Commissioners and DCs, throughout the hearing, maintain a list of positive and negative factors they discern during the hearing for reference during deliberations with all other panel members. There is no specific training on when to give a one, two, three, four or five year denial. That is a discretionary decision of the panel based on the individual case analysis of the specific case factors. It is emphasized during that training that once a determination is made to deny parole, the length of the denial should be for the period of time in which the panel believes the inmate will reasonably become suitable for parole. This will always vary depending on the individual case factors and the recommendations regarding programming (e.g. vocations; marketable skills; viable parole plans).

A draft regulation providing general guidelines for application of progressively higher denial factors is being prepared by legal staff. Head to head comparison of Commissioner denials versus grants and/or multi year denials and shorter denial periods is at best unexacting. Institutions have different custody levels and classification levels and the frequency with which a Commissioner goes to more controlled institutions rather than more program oriented facilities will alter the validity of direct comparisons.

21. *Last year, there were at least two instances in which the video-conferencing equipment was left on during the board's private deliberations. As a result, these private deliberations were inappropriately heard by members of the district attorney's staff at a distant location. What is the board's ethics policy with respect to who may listen to a deliberation at a remote location and when? How has this policy been approved by the board, disseminated and enforced during the board's deliberations? Whose job is it to notify the panel that the microphone has been left on?*

The Board Commissioners receive specific training on general ethical behavior in their first week of service. While not specific to the ethics of video conference technology, the central message is stressed to all Board hearing officers whether Commissioner or DC.

Additionally a directive has been promulgated and distributed to District Attorneys, Commissioners, DCs, and staff, detailing expected standards for use of video conferencing technology during board hearing proceedings. Specifically referenced is that anyone hearing a video conference signal in error should immediately cease do so and notify the hearing panel.

Senate budget staff was recently provided with a sample of the training provided to new board members and deputy commissioners. Apparently, the deputy commissioners participate in a 4-5 week training academy, while the board members receive individualized training sessions, totaling an average of 145 hours per member on a wide range of topics.

22. Who determines what training should be provided to board members and deputy commissioners? Who designs the training? Who provides it? How do you evaluate the training that is provided? Please be specific.

The training time that newly appointed Commissioners and newly hired DCs receive is ostensibly the same. Typically we hire DCs in multiples for efficiency and effectiveness. Certainly the subject matter differs significantly as DCs must learn the Valdivia proscribed parole revocation hearing process and Commissioner training focuses on parole suitability hearings. Commissioner appointments are generally more sporadic and as a result they get more individual attention specific to their need and at their pace. We have had professionally qualified curriculum writers working with us to prepare Board training information for each Commissioner training module into professional lesson plans to ensure consistency of delivery and content. Additionally, there are plans to commit training modules to video format so that distance learning and refresher training can be more readily and logistically achieved. Commissioners and DCs are afforded the opportunity to indicate training topics of interest and need. Additionally, emerging court case decisions prompt training needs. Some training is mandated at specific intervals. Training topics and needs are also revealed through decision review, appeals, inquiries, etc. Individual post-training feedback received via post-training evaluations is the most immediately reliable validation of the hearing officer training. We solicit both feedback from the hearing officers as well as those working with the hearing officers at intervals, both in person, and through others, as well as deploying the Chair, to monitor and review progress.

Compensation and Monitoring of Attorneys

The compensation for attorneys who conduct parole revocation hearings is governed by the Valdivia lawsuit. As a result, these attorneys receive a flat fee of \$180 per case, regardless of the amount of time spent. Approximately 80-85% of these cases are resolved at the Probable Cause Hearing, which typically lasts less than 30 minutes (not including preparation time or time spent with the client prior to the hearing). However, the compensation for attorneys who conduct lifer hearings has not been adjusted in recent years. These attorneys are compensated for \$30 per hour with a cap of 8 hours, including travel times. Given that a lifer hearing can last 3-4 hours and that preparation and travel are included in the 8 hour cap, the Rules Committee has been told that this compensation policy results in board-appointed attorneys rarely meeting with lifer inmates prior to the hearing or afterward.

23. Who decides to request an increase in compensation for lifer attorneys? Would this be your responsibility? The responsibility of the Board Chair? Or the California Department of Corrections and Rehabilitation?

It is my responsibility to ensure that whatever is necessary to get hearings conducted is available and provided. In that context, where there is a demonstrated deficiency and/or inability to adequately provide competent counsel for attorneys who represent inmates at parole suitability hearings, I would author a budget augment request and justification.

Always the first question in such a review is, "what is wrong that needs to be fixed?" In this instance, the germane question is whether the BPH is experiencing problems getting qualified attorneys to assign to these cases. The fact is that has not been a problem either historically or currently. The current attorney compensation schedule set by the State is \$30 per hour. The provisional cap of eight hours per case, including travel time, with justified exception requests as determined by the BPH, was established by the Board many years back and assumed to be viable then. Yet, I am concerned that competing attorney compensation schedules may soon begin to erode our ability to readily and timely obtain required representation. Therefore, I have directed Board staff to develop a comparative analysis contrasting differences between prior Board experience and current processes in average length of hearings, number of hearings per day, numbers and geographic location of institutions, and other factors. Additionally, this analysis will compare and contrast the current compensation schedule for attorney's representing parolees in Valdivia hearing proceedings.

24. How is the quality of attorney representation monitored for both parole revocation and parole suitability hearings?

There is no systemic oversight mechanism conducting ongoing assessments of the quality of attorney representation provided in parole suitability hearings. I assume the prevailing belief has been that they are State Bar certified and, unless they demonstrate otherwise, they are

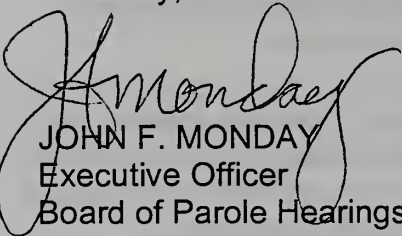
June 1, 2007

qualified to perform these legal services. Attorneys wishing to be assigned to parole suitability hearings are provided information regarding specific areas of the law and legal resource citations and are encouraged to observe Parole Suitability hearings. Thereafter, their Bar information and personal information is attained and they are added to the attorney representation eligibility panel.

For parole revocation proceedings, the State contracted CalPAP, who provides recruitment, training, monitoring, advocacy quality oversight and scheduling services. This system has matured since inception two years ago into a smooth and efficient process for all parties.

If there are any questions or issues you or your staff would like to discuss, please contact me at (916) 445-1350.

Sincerely,



JOHN F. MONDAY
Executive Officer
Board of Parole Hearings

cc: James E. Tilton

Senate Confirmation Hearing
Janice K. Eng, Commissioner
Board of Parole Hearings
Response to Senate Rules Committee Questions
June 1, 2007

Statement of Goals

- 1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure? How will you measure your success?***

My main goal is to conduct fair and impartial hearings, keeping in mind, public safety. I want to be able to make a positive difference, an impact on the parole hearing process including fairness to the inmates, defense counsel, district attorneys, and victims/victim next of kin; everyone that participates in the hearings. Personally, after working 30 years in the private sector working for small start-up companies, medium sized companies, and Fortune 500 corporations, I really wanted to do something in the public sector, to provide public service and be in a position to give back to my community in some way – basically to make a difference.

Being a commissioner on the Board of Parole Hearings (BPH) puts me in a position to have significant impacts on people's lives. One of my objectives in this position is to help the inmates recognize what their role is and challenge them to take responsibility for their own future and success on the outside; so they can be pro-social and contributing members of their communities. Success in this area can be measured by receiving feedback from released inmates as to how they are doing in the community after six months, one year, and five years after release.

- 2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to this conclusion and what you use to assist you with this analysis.***

Can inmates be rehabilitated and safely returned to society? Yes. I have granted dates to those that I truly believe are ready, who have set themselves up with solid parole plans as well as backup plans in order to succeed on the outside. I stress that they should set up many safety nets within the community should the stresses of being in the free community become too much at any given time. In this way, they have people and places to turn to instantly to help them stay grounded and on the road to success.

I also stress this to inmates that are denied parole and let them know that the choice is theirs.

Engaging inmates in conversations that enable them to elaborate and thoroughly explain their plans is a necessity and gives us an idea as to how much thought the

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Appointments

inmate has personally gone through in planning their successful futures. I stress to them that it is their responsibility to clearly understand and identify what they believe their personal needs will be to be successful. This may mean that they should not parole back to their families right away and many have stated this to me. They believe they will need to transition slowly from their highly structured prison life to life in their own community, so many have chosen to go to residential facilities that provide ongoing counseling and programming geared to the parolee's adjustment back to the community. This type of thinking shows us how serious they are about their success and they are being more realistic about the challenges they will be facing after being incarcerated for so many years.

During the hearings I also ask the inmates questions about their programming and involvement in self-help. Many times I will ask them the same questions in different ways to see if they are consistent and to see if they really do understand what the program is all about, why they are attending, what they get out of attending, and how they use the information they have learned. One key area I inquire is to explain to the panel what the program means to them personally and how they actually apply what they have learned. This is how we find out if they are attending programs for the right reasons and not just because the board asked them to.

Training

3. ***Please describe any training or other assistance you received to prepare you for your responsibilities as a board member including the approximate number of hours it took. Who provided your training? What recommendations could you offer to improve the training of new board members? What ongoing training do you think should be provided to all board members?***

I went through three weeks of initial training in Sacramento. The training was rather intensive and very organized. I have no background in law enforcement, criminal law, or with the criminal justice system. The training covered all aspects affecting the hearing process; including Title 15, dealing with victims/victim next of kin, key case law decisions, mock hearings, investigations, prison gangs and weapons, prison protocol, and observing ongoing hearings. Experts representing each area were brought in to conduct the training one on one. For instance, the executive director of the Doris Tate Victims group gave me a presentation and I was able to have a detailed discussion with her. BPH legal is also heavily involved in many of the training segments. Training was also provided by former deputy commissioners on the inmate's Central File.

After this formal training I had a week of observations of different hearing panels. To help make me more comfortable, I was allowed to do an additional week of

observations where we did three person panels. I was able to actively participate in these hearings (I could have participated the week before but I was not yet comfortable enough). I believe this extra week really helped me to get ready to go 'out on my own.' I recommend that this additional time be allowed to participate in three person panels so new commissioners can get used to the process, the recording, and the handling of legal issues. I also believe there should be additional training for all commissioners on how to handle all different types of requests for postponements and continuances.

During December 2006, all of the commissioners received an additional week of training, including presentations by representatives of District Attorneys, a representative from the Attorney General's office and victim services. Also, we are provided ongoing training as issues and needs emerge.

- 4. Does anyone from the Board of Parole Hearings sit in on your hearings to provide you with feedback and assistance? If so, who and how often? Particularly in the early months of your service, did anyone review your hearings or transcripts to help you improve your skills?**

To date, I have had a Chief Deputy Commissioner (A) sit in on one of my hearings. She did provide some feedback to both panel members right after the hearing. Although the hearing transcripts are made available to BPH Legal, I have not received feedback and I have not sat down with anyone to discuss ways to improve my performance. I generally ask my fellow panel member for feedback.

- 5. What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the crime? How do you factor in the decisions made by previous panels in denying or granting suitability? What factor is most important to you in considering parole suitability?**

All commissioners have a standard script that we follow for initial and subsequent hearings. I developed a standard script that I sent to all commissioners for stipulations, waivers, and postponements that incorporates all elements of the letter we received outlining the requirements per the Marin County court decision. We also use the same documents for all decisions, grants and denials, so we do have consistency assuming everyone uses the scripts. I work together with the deputy commissioners in going through the grant or denial script to determine the appropriate factors to be considered and we discuss and determine together what our final decision will be. In situations where we do not agree and are split on granting a date, then each of us will complete

the respective grant and denial scripts and present our separate decisions and reasons during the reading and final phase of the hearing.

Each hearing is different regarding what factors to consider and how much weight we give to any one thing. I always write out a list of all prior decisions, dates and dispositions, when I am preparing a case. I generally do not have enough time to read through details of the prior hearings, depending upon the case. Some cases are much more complicated than others and may require more time and research than most cases on average. In those cases, I will probably take a look at one or two prior hearing transcripts, but I generally focus on particular areas, such as how the previous hearing panel assessed the prior psychological evaluation(s), the recommendations of the hearing panel to the inmate, and what the inmate said about certain things. This is important if the inmate has a history of changing his stories. However, I do my best to not be influenced by prior decisions as every day is a new day and you never know how the inmate will present himself or if there were any significant events that have occurred during the period.

6. *How should the Legislature evaluate the effectiveness of the Board of Parole Hearings? What should we look for when we observe hearings or review transcripts?*

Effectiveness of the BPH should be measured by feedback on those that have been paroled and how they are doing in the free community. I personally would like to know and see actual statistics on their status at different time intervals. I would like to know what is working for them and what is not. Feedback from them on residential programs, employment assistance, and availability of substance abuse programs and how effective they are, and even what recommendations they have to help others that will be free. If we know that 99 percent of those lifers released are successful on parole 5 years after release, then we would know that we have done a good job in preparing them for release and in making our decisions to release. If we find that, for example, 50 percent are re-offending, are homeless or on the verge of failing, then something is wrong and we are not releasing the right people or we have not done a good enough job in preparing them for successful release. I also believe that the legislature should observe hearings in person. One cannot imagine what it is like unless you attend them. It is important to be able to look an inmate in the eyes and watch the body language and gestures and hear how things are stated. You cannot get any of this by reading a transcript.

7. Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.

I have not had the privilege of attending or observing any programs at any institution. This would be a wonderful thing to add to our training. Unfortunately we do not have any time at the institutions. Once we arrive, we are preparing for the hearings for the day, making sure we have last minute documents that were not included in our packets, making sure the inmates are being brought up to the hearing rooms, briefing victims/victim next of kin, meeting with the district attorneys and defense counsel to see if there are any issues, checking to see if we have all paperwork for each hearing, etc. Once we start the hearings, we go nonstop until we complete the last one. I have yet to have time to take a break to eat lunch since I started. If we are scheduled for four hearings in a day and all four go forward, I am generally there, on average, from 7:30 a.m. until at least 7:30 p.m., and often later with only restroom breaks. Even with three hearings in a day, I generally have a nine to ten hour day. There are times when we have four to six hour hearings. In order to observe prison programming, our hearing schedules would have to be cut back. An important way for us to see if any type of programming is effective is through the "Q & A" session with the inmate and how well they can describe what the program is about, what they have been learning, and how they apply the concepts.

Hearing Preparation

For several years, the Rules Committee has expressed concern about the preparedness of board members prior to the hearings.

8. Please describe when and how you prepare for each hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for future hearings? What would you recommend to improve the ability of commissioners to prepare for the hearings?

I begin to prepare my cases for the following week on Friday evening when I return home from that week's hearings. I try to get two cases done on Friday night. Then I start early Saturday morning and work all day for at least eight hours or more. I finish up on Sunday afternoon or evening. I spend, on average, 60 minutes per case for the initial preparation (16 hours total). I re-review the cases the night before the hearing to refresh my memory – this takes around 30 minutes per case. The day of the hearing, I generally spend another 15 to 30 minutes in last minute preparation per case. This is to pull the prison paperwork together, read all last minute reports, such as psychological evaluations, updated board reports, letters, and legal documents from the district attorney – all information to be considered for the hearing. So, on average, the total preparation time per case is approximately 1 hour 45 minutes to 2 hours.

As stated previously, there are some cases that are much more complicated that have taken up to 5 hours preparation time due to all of the legal documents that have to be reviewed. The more years incarcerated, the more offenses, the more appeals/writs filed, the more complicated the case so the more time required to review. Some institutions have more complex and thicker packets than others. For instance, San Quentin is known for their programming. Most of the cases I have heard there include packets that are more than two inches thick with documents to be reviewed; also, as many of the lifers have been incarcerated for multiple years, there is a lot of information in their files to review. Yet, comparing San Quentin to a level IV institution that doesn't have the same amount of programming, such as Kern Valley State Prison, the review of these files may not require as much time as many of the lifers (the hearings I was scheduled to conduct) were at the beginning of their terms and appeared to be having difficulty adjusting, many having serious disciplinaries.

I generally have the files at least one week before the hearings. I do not have the time to review them any earlier as I am concentrating on the current hearings.

Commissioners need time to properly review and prepare for the upcoming hearings and we should not have to work seven days a week to accomplish this. We have Monday mornings to travel to our designated institutions and then conduct at least two hearings beginning at 1 p.m. (this assumes that all parties are present and ready to go which is generally not the case). The rest of the week we are to conduct up to four hearings per day beginning at 8:30 a.m. In my estimate, it takes on average two and half hours to conduct a thorough hearing if the inmate is discussing the life crime. Many hearings last three hours or more depending upon how long discussion with the inmate go, how many questions the district attorney has, if there are victims or victim next of kin and if there are legal issues that arise during a hearing. Each evening, I re-review the cases for the next day. Fridays we are scheduled for two hearings and then we have the rest of the day to travel back to our home bases.

Based upon the preparation time I outlined earlier, that only leaves us the weekends to do initial preparation. To be fair to all involved, I believe that there should not be any hearings scheduled for Mondays and Fridays; these days should be left for travel and preparation. The rest of the days I believe we should hear a maximum of three hearings a day. By the fourth hearing, people are generally tired and I do not think this is fair for the last inmate. It is mentally exhausting to have to conduct four hearings in a day with no time for lunch or any real breaks. We generally move from one to the next as quickly as possible so we are not there until 9 at night. Everyone is tired even in the third hearing if we have all of the same parties.

9. *How do you prepare for the en banc hearings?*

Preparation for en banc is the same as for our scheduled hearings, but somewhat more difficult as we have to review all the details of each case on our computers. We receive a disc with the information to review prior to the meeting. The BPH staff also provide hard copies of each case that is available to commissioners when we arrive at the Sacramento headquarters building. This last month we had eight compassionate release cases to review plus six other regular hearing decisions to prepare for. This was in addition to the cases we had to review for the balance of the week at our designated institutions.

Postponements

Based on information received from the Board of Parole Hearings, over 35% of the hearings that you were scheduled to conduct from the time you were appointed through March 2007 were postponed. This figure does not include the many hearings postponed as a result of institutional issues or errors.

10. *Please explain why over one-third of your hearings have been postponed? What strategies would you recommend to alleviate this problem? Who do you believe is ultimately responsible for the large number of postponements?*

Postponements – I have never postponed a hearing because I was not prepared. Being that I prepare all cases the weekend before I am ready to move forward and am generally not pleased if there are last minute requests to postpone. I would estimate that most of the postponements I approved had to do with the psychological evaluation not being available. This has been a major problem especially at the Correctional Training Facility (CTF) where I was doing so many of the hearings. I had been advised that if previous panels had requested new/updated psychological evaluations prior to the inmate's next hearing and they were not done, then we should not ignore that request. I generally gave the inmate and their counsel an opportunity to waive the new psychological evaluation and move forward being that this is only one of many factors that the panel considers. If the prior evaluation was positive, then moving forward would not be a significant impact on the decision. Basically I err on the side of caution if I believe that moving forward would violate an inmate's due process rights.

Other postponements have been due to no defense counsel being available or assigned, no interpreter provided as requested, improper or no notice given to the inmate regarding the date and time of their hearing, last minute psychological evaluations delivered when the inmate has not had time to review and challenge it, illness, institution lock down, counsel was not afforded time to meet with their client to properly prepare for the hearing, and after questioning an inmate who has waived

counsel, determining that it would not be in their best interests to go forward without counsel as they did not understand their rights and the hearing process. On many initial hearings at CTF, I did not have any current psychological evaluations as is required; many were five or more years old. This is not fair to the inmate to move forward with an initial hearing.

Psychological Evaluations

As you know, a frequent reason for postponing a hearing is the lack of an updated psychological evaluation. According to the Executive Officer, psychological evaluations should be valid for five years.

11. *Who made the decision that evaluations should be valid for a five year period of time?*

I am not aware who made this decision. I recall that the Executive Officer and BPH Legal Department provided those guidelines to the commissioners. The commissioners were also informed a few months ago by the Executive Officer and the head of the new BPH mental health evaluation group that psychological evaluations would be done every five years and that commissioners could request interim updates that are specific to certain areas of concern that should be addressed prior to the inmates next hearing if it will be held in less than five years.

12. *What role does the psychological evaluation play in your decision about parole suitability? Are you comfortable relying on an evaluation that is five years old? When is it appropriate to grant a postponement because a psychological evaluation is not current? Are there circumstances when a period of five years between psychological evaluations would not be appropriate? Please describe.*

Prior to the new psychological evaluations and psychologists being used, I felt that many of the evaluations were of little to no value. Many seemed to be 'cut and paste' reports with just the names changed. I felt that many failed to address some basic areas that anyone off the streets would be asking about. The reports are just one of many factors that are used in determining suitability – every case is different. I also look at changes from one report to another and often go back and review all prior reports. Unfortunately, we do not always have the luxury of time to accomplish this to be able to review all prior evaluations. I always go back at least one or two. If they are inconsistent, then I start going back further for review.

I am not as concerned with a five year old psychological evaluation if most of the prior evaluations are positive and are all consistent along with the inmate's behavior records.

I believe it is appropriate to grant a postponement because a psychological evaluation is not current under the following situations:

- For an initial hearing;
- When prior panels have requested an updated psychological evaluation;
- When an inmate and their legal counsel have not received the report in a timely manner – violating the ten day rule – with inadequate time to question or challenge the findings;
- When the last psychological evaluation is five or more years old – whether positive or negative;
- If an inmate was under mental health treatment; such as Correctional Clinical Case Management System (CCCMS) or Enhance Outpatient Program (EOP) level of care, during the period since their last hearing and the present hearing and have since been removed or vice versa – if an inmate became CCCMS or EOP;
- If the panel feels that the inmate shows obvious signs of mental decompensation. We will generally pose many questions to the inmate and gauge their responses.

If an inmate has had mostly negative psychological evaluations then based upon their progress report, appear to be making positive progress, participating in programming and self-help, then an updated evaluation is in the inmate's best interest. If the inmate has been found guilty of a serious disciplinary violation since their last hearing, then I would want to have a more current psychological evaluation that could help me see if the inmate has been going through any type of unusual stresses/activities or that could provide insight as to what may be going on that could cause the inmate to behave negatively. It has been, and will continue to be, the panel's discretion regarding whether to request an updated psychological evaluation when and if we feel it is necessary to address certain areas that we believe the prior evaluation(s) have not addressed.

13. *When are you able to examine a file to know if a complete and updated psychological examination is included in the file?*

I examine my files the weekend before the scheduled hearings. I always look at what the prior decisions were and if there was a requested psychological evaluation. Then I look in the psychological evaluation section to see if one has been done. If it has not been included, then I have to check to see if it was completed by looking in the inmate's Central File when I get to the institution the week of the hearings. Most times I will not know until the day of the scheduled hearing when they bring the files to the hearing room. That is why I often need 15 minutes to review all last minute documentation provided. I do not know if defense counsel and the inmate received these documents prior to the hearing until defense counsel enters the hearing room and lets us know.

Often they will tell us that the inmate does not want to go forward because they did not have the time to review the reports – this typically happens when the report is not favorable.

Multiple Year Denials

Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.

14. *What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be? Please explain.*

For a one-year denial, I look at all previous decisions and if the inmate has received one or more one-year denials in a row. Once we complete the hearing and enter into deliberations, we take a look at whether the inmate meets all criteria for suitability and if he does not, but has maintained or improved his programming and overall performance yet does not quite have everything in order, then we might issue a one-year denial to give the inmate a chance to firm up everything and/or provide the next panel with the proper documentation. We also discuss whether or not 12 months will be enough time for completion in areas the inmate may be deficient.

I do not recall any specific training in this area. Again, the panel follows the 11 page denial form to document decisions. However, I generally do not determine until the very end of the hearing how long the denial will be and I always discuss everything with the other panel member(s).

15. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?*

I do not use whether or not an inmate can receive the programming that they need in determining a multi-year or single year denial. We do recommend that they seek whatever self-help or programming that is available to them to help them address certain issues in question. It is their choice and their decision if they want to seek this out or not. I suggest that they be able to discuss that they understand what a program is all about, why they are attending, and how they apply whatever they have learned. I also suggest that they read magazines, books, watch videos, listen to tapes, etc. and document what it is that they did, what it meant to them, and how they use it; and to bring this information to the panel as this is also documented self-help. Availability of programs is not a factor that I consider to determine non-suitability; our decisions are

based upon many factors and to provide an inmate with adequate time to comply with recommendations given by the Board.

Board Policies

The Board of Parole Hearings is governed by Title 15 of the California Code of Regulations, yet changes occur in law and/or court decisions that affect the board's proceedings.

- 16. How are you notified when there is a change in law or a court decision? Are there aspects of Title 15 that you have found outdated or even contradictory to current board practices? If so, please describe and explain how you know what the appropriate process is. What else, besides Title 15, do you rely upon for guidance with roles, responsibilities, and board policies?**

In my experience, I have been notified of changes in law or court decisions when the board meets monthly en banc. We are informed by BPH Legal on these issues. Regarding Title 15, so far I have not found anything that is contradictory to board practices and I use Title 15 as my guidance. I believe that if I think that doing something could be perceived as a violation of an inmate's rights, I err on the side of caution and assume that it is a violation. I often pull out my Title 15 and refer to it when I am not sure of a procedure. If after reviewing a particular section I am still not sure, then I call BPH Legal in Sacramento for their advice.

Self Help, Vocational and Education Programs

The extent to which an inmate has participated in self help, education and/or vocational programs is regularly a subject of discussion at an inmate's parole suitability hearings and additional programs are typically recommended when an inmate is denied parole. However, the availability of these programs varies widely across the state's prisons.

- 17. To what extent are you informed about the availability of self help groups and educational or vocational programs at the institution where the inmate is incarcerated? Please explain how often and by whom you are informed of this information.**

I am informed by the inmates and by my review of their files and what programming they have been involved in. I know through experience with different institutions what types of programming are offered. It would be helpful if each of the institutions provided commissioners with a list of current programs.

- 18. *If a prisoner requires additional programming before becoming suitable for parole, how is this information conveyed to the institution? When or how would you find out if the recommended programming is not available? In cases such as this, when the recommended program is not available at that institution, what alternatives do you recommend, if any?***

Panels use certain decision forms to indicate what we recommend an inmate should do prior to their next hearing. We keep it general as it is the inmate's choice as to what, if anything, they will attend. It also states on the forms, self-help (if available) and therapy (if available). Some institutions do not have programming available; this is why I generally make suggestions to all inmates what else they can do besides attending pre-set programs – such as self-study and how they can document what they are doing on their own.

Senate Confirmation Hearing
Edward Martinez, Commissioner
Board of Parole Hearings
Response to Senate Rules Committee Questions
June 1, 2007

Statement of Goals

- 1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure? How will you measure your success?***

My objective as a member of the Board of Parole Hearings (BPH) is to conduct fair and impartial parole consideration hearings addressing each case individually. My goal is to earn the respect of my peers and all those involved in the hearing process by providing fair and impartial hearings and to maintain an ethical standard of conduct throughout my tenure.

During my tenure, I would like to contribute to the reduction of the *Rutherford* case backlog and observe substantial compliance in this matter. I will remain current in training, education and the laws in order to provide me with the resources to make sound decisions.

A measure of success is reducing the *Rutherford* case backlog and to remain in compliance of the lawsuit. This ensures that hearings will be conducted in a timely manner and does not violate the prisoners' due process.

- 2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to this conclusion and what you use to assist you with this analysis.***

Yes, I do believe that an inmate can be successfully rehabilitated and safely return to society. This conclusion is drawn from the hearing. The hearing provides the facts of the crime, the prisoner's prior criminal history, programming status, disciplinary record in the institution, whether or not the inmate has gained insight and has come to terms with the life crime, has adequately expressed genuine remorse and empathy and truly understands the causative factors of the life crime. One example involves a recent rescission hearing I conducted in which the inmate's parole date was affirmed. To my knowledge this inmate who has been released now for approximately four months has successfully paroled. I have not received any further information that he has returned to the institution.

Senate Rules Committee

JUN 01 2007

Appointments

Training

3. ***Please describe any training or other assistance you received to prepare you for your responsibilities as a board member including the approximate number of hours it took. Who provided your training? What recommendations could you offer to improve the training of new board members? What ongoing training do you think should be provided to all board members?***

The BPH provided the majority of the training when I was first appointed. The training initially consisted of an overview of BPH followed by a diverse training including:

- Ethics
- Victim services
- Gangs overview
- Rutherford court compliance
- IPB, aka Battered Women Syndrome investigations
- Legislative functions
- Term calculations
- American Disabilities Act
- En banc executive board meeting
- Central file training
- Lifer hearings process preparation/completing lifer forms
- Victim advocacy/Violence and Sexual assault
- How to review grant and denial transcripts
- Major litigation
- Institutional security
- Investigations unit functions
- Foreign prisoner transfer program
- Legal review
- Off site hearing observation
- Mock hearings

In addition, there is monthly ongoing training for commissioners. In December of 2006 there was additional training in the areas of:

- Overview of immigration and customs
- Status of clinical psychological evaluations
- En banc
- Making record of decisions
- Term calculations /Parole suitability
- Case law

- PC 3000.1 hearings
- Overview pending litigation
- Sexual harassment
- Bagley-Keene act brief

A recommendation for BPH would be to lengthen some of the training specifically in the areas of term calculations, central file training, review of grant and denial transcripts, major litigation and further training in the area of offsite hearing observations.

Ongoing training should include legal updates to board members and being informed of ongoing BPH functions.

Total training hours consist of 162.25 which includes institutional training and on the job training from July 2006 through April of 2007.

- 4. *Does anyone from the Board of Parole Hearings sit in on your hearings to provide you with feedback and assistance? If so, who and how often? Particularly in the early months of your service, did anyone review your hearings or transcripts to help you improve your skills?***

During the initial training, commissioners are sent to observe and participate in the hearings being conducted by a more experienced commissioner and are given the opportunity to conduct hearings with the oversight of a fellow commissioner. During the onset of conducting hearings, the new commissioner is usually placed with a seasoned deputy commissioner who provides assistance and feedback. The legal division of BPH is also available when a commissioner has questions regarding legal matters. Once a commissioner's transcripts are made available to the legal division, they could provide feedback as to how the hearings are conducted. In my experience, it took several months for legal to have access to the transcripts and was in a position to provide feedback.

- 5. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the crime? How do you factor in the decisions made by previous panels in denying or granting suitability? What factor is most important to you in considering parole suitability?***

All board members are given the required format for the lifer hearings and are expected to follow the process.

All board members and deputy commissioners should weigh the various factors in a consistent manner. The appropriate emphasis is based on multiple factors: the facts of the crime, parole plans, psychological assessment, criminal history, institutional behavior, programming, insight, remorse and empathy. The facts of the crime are a focus, but other contributing factors have to be considered and given their adequate weight.

Previous panels only provide a frame of reference and are taken into consideration. Each case is handled individually and must be assessed in a current time frame. Changes could have occurred since the inmates last hearing that need to be taken into consideration. I would go through the same process to make my decision based on the information available at the hearing to determine if the inmate is suitable or unsuitable for parole at the time of the hearing.

All factors are important when considering suitability for parole. There is not just one factor that I consider the most important.

6. *How should the Legislature evaluate the effectiveness of the Board of Parole Hearings? What should we look for when we observe hearings or review transcripts?*

I feel the Legislature could benefit by having available statistics as to the number of inmates that have a successfully paroled and continue to stay out of the institutions. The Legislature could also benefit by attending the parole consideration hearings in order to get a good sense of the dynamics of the hearings. It would certainly give the Legislature an overall understanding as to how the hearings are conducted and how the decisions are made as to suitability or unsuitability. I feel that being personally involved in a hearing is more beneficial then actually reading a transcript.

7. *Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.*

I have not had the opportunity to observe any educational, vocational or self-help programs in the state prisons. This is due mostly to time constraints and heavy scheduling of parole lifer hearings.

The effectiveness of a program is usually determined through discussion with the inmate during the hearing. Program effectiveness is based on the fact of providing current technology or current knowledge in the field of interest. Moreover, the inmate is offered the opportunity to maintain updates; for example for vocations such as auto mechanics or computer industry.

Hearing Preparation

For several years, the Rules Committee has expressed concern about the preparedness of board members prior to the hearings.

- 8. *Please describe when and how you prepare for each hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for future hearings? What would you recommend to improve the ability of commissioners to prepare for the hearings?***

Hearing preparation is accomplished the weekend prior to the scheduled hearings and further reviewed the night before the hearing. I maintain a consistent system in preparing for each case. This involves reviewing the Board packet that is provided by the institutions. I review the facts of the crime, review the previous decisions, institutional disciplinary history, psychological evaluations, parole plans, programming, progress reports and support letters.

The average preparation time spent on each case is one and a half to two hours. The files are made available one to two weeks prior to the scheduled hearing.

I would recommend the BPH along with CDCR address the issue regarding board packets not being consistent with it comes to providing the same information in the files. This would certainly provide commissioners with a more complete file and save time in reviewing. The information provided in the Board packets will sometimes vary from institution to institution.

- 9. *How do you prepare for the en banc hearings?***

BPH provides a compact disk, which includes all of the en banc hearings, scheduled for that month. The information provided consists of a Board packet and transcripts for each case in order that we are able to prepare for the monthly hearings usually one to two weeks in advance.

Postponements

Based on information received from the Board of Parole Hearings, over 25% of the hearings that you were scheduled to conduct from the time you were appointed through March 2007 were postponed. This figure does not include the many hearings postponed as a result of institutional issues or errors.

- 10. Please explain why over one-quarter of your hearings have been postponed? What strategies would you recommend to alleviate this problem? Who do you believe is ultimately responsible for the large number of postponements?**

Generally postponements are made to observe the inmate's right to due process. The majority of postponements I have made are in the best interest of the inmate. I requested information from BPH headquarters regarding the information on postponements as posed in the question so that I may review it and respond. I am providing a chart (see Attachment) that provides the breakdown of my postponements from December 2006 through March 2007. Prior to December, statistics for postponements with this breakdown information were not kept by BPH.

Postponements in the "CDCR" category include such things as psychological evaluations or hearing packets not completed. A strategy that would alleviate this problem is to have consistent communication between the BPH and the institution, which could ease potential issues that cause postponements.

I believe the responsibility of postponements is a combination of variables such as institutional processes, attorney and inmate postponement requests.

Psychological Evaluations

As you know, a frequent reason for postponing a hearing is the lack of an updated psychological evaluation. According to the Executive Officer, psychological evaluations should be valid for five years.

- 11. Who made the decision that evaluations should be valid for a five year period of time?**

I have no knowledge as to who made this decision.

- 12. What role does the psychological evaluation play in your decision about parole suitability? Are you comfortable relying on an evaluation that is five years old? When is it appropriate to grant a postponement because a psychological evaluation is not current? Are there circumstances when a period of five years between psychological evaluations would not be appropriate? Please describe.**

Psychological evaluations play an important role as do other factors in determining parole suitability. All factors presented at the hearing are given their adequate weight.

Each hearing is different and should be considered on an individual basis. There are times when an inmate status had remained unchanged and therefore does not warrant a new psychological evaluation.

It is appropriate to grant a postponement when a psychological evaluation is not current; specifically when the inmate has had a significant change in their behavior or mental status.

I feel it is appropriate to recommend a new psychological evaluation within the five years when the inmate has had a significant change in his behavior resulting in disciplinary action. Another reason, which would warrant a new evaluation, would be if the inmate has had deterioration in his mental status requiring a mental health evaluation.

13. *When are you able to examine a file to know if a complete and updated psychological examination is included in the file?*

The first opportunity to examine a file is when I receive the Board packets at my residence. I will then review the files and determine if there is a current psychological evaluation in the file. If there is not a current evaluation, the first opportunity I have to review the psychological evaluation is at the prison.

Multiple Year Denials

Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.

14. *What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be? Please explain.*

If an inmate received a one-year denial at his previous hearing, is found to be unsuitable for parole at the current hearing and there is nothing to justify giving the inmate more than one year, I will maintain the one-year denial. Exceptions are when an inmate has not been programming or has had recent disciplinary issues, which could justify a multi-year denial. Another example is when an inmate's vocation is obsolete and he or she needs to obtain a new vocation. Usually it is not realistic for an inmate to obtain a new vocation within a one-year time frame. A multi-year denial might be more appropriate and in the best interest of the inmate to allow time to complete the programming.

In regards to training, I was instructed if I was to consider giving a multi-year denial, I needed to justify my decision; which I feel goes without saying. All decisions regarding a parole consideration hearing require the commissioner make a good record and justify their decisions.

There is no written criteria that I am aware of regarding the length of a denial. Decisions rendered are done on an individual basis.

15. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?*

One way to determine this is by contacting the institution as to the availability of programs. Another option is to address this issue with the inmate during their hearing. Keeping in mind the other options an inmate has; for example, if an inmate cannot receive the programming they need through classes, they have an option to take self-study which consists of going to the library checking out a book and doing a book report to present to the panel. If an inmate has not taken the initiative to help himself or herself and only presents excuses as to why he or she has not been able to program, then it is possible that a multi-year denial would be appropriate. The panel could also recommend the inmate be transferred to another facility where they have the opportunity to program.

Board Policies

The Board of Parole Hearings is governed by Title 15 of the California Code of Regulations, yet changes occur in law and/or court decisions that affect the board's proceedings.

16. *How are you notified when there is a change in law or a court decision? Are there aspects of Title 15 that you have found outdated or even contradictory to current board practices? If so, please describe and explain how you know what the appropriate process is. What else, besides Title 15, do you rely upon for guidance with roles, responsibilities, and board policies?*

The BPH legal division notifies the commissioners of recent law or court decisions and keeps them up to date and informed. The legal division will usually notify the commissioners by e-mail, letters, and at the monthly Board meetings.

To the best of my knowledge, I have not found outdated or contradictory sections of the Title 15. I rely on the Title 15 for guidance; however, as stated above, we are also provided information and training from the BPH legal division.

Self Help, Vocational and Education Programs

The extent to which an inmate has participated in self help, education and/or vocational programs is regularly a subject of discussion at an inmate's parole suitability hearings and additional programs are typically recommended when an inmate is denied parole. However, the availability of these programs varies widely across the state's prisons.

- 17. To what extent are you informed about the availability of self help groups and educational or vocational programs at the institution where the inmate is incarcerated? Please explain how often and by whom you are informed of this information.**

I feel it is up to each commissioner to stay current on program availability within the institutions. This can be done through the institution's web site, which lists what programs are available. It can also be done by contacting the correctional staff at the institution and inquiring about current programs.

- 18. If a prisoner requires additional programming before becoming suitable for parole, how is this information conveyed to the institution? When or how would you find out if the recommended programming is not available? In cases such as this, when the recommended program is not available at that institution, what alternatives do you recommend, if any?**

The commissioners are provided with the necessary forms, which are completed at the end of the hearing once a decision is rendered. The decision sheet is provided to the institution for their review. The institution will also, at a later date, receive a copy of the transcript, which outlines the recommendations of the panel. In addition, an inmate is given a copy of decision and the panel's recommendations.

Prior to addressing the recommendations to the inmate, a commissioner can contact correctional staff and determine what is currently available regarding a recommended program. This can also be obtained through discussion with the inmate during the hearing.

When recommended programming is not available at the institution, I will recommend the inmate involve himself or herself in self-study as an option or do correspondence study. The panel can also recommend that the inmate be considered for transfer to another institution where they can receive the program they need.

MONTH	ID#061
Dec-06	Martinez
Scheduled Hearings	43
Total Postpone	11
Inmate/Attorney	6
BPT	0
CDCR Psych Eval	4
CDCR Hearing Docs	1

MONTH	ID#061
Feb-07	Martinez
Scheduled Hearings	52
Total Postpone	9
Inmate/Attorney	5
BPT-Panel Conflict	1
CDCR Psych Eval	2
Quarantine	1

MONTH	ID#061
Jan-07	Martinez
Scheduled Hearings	75
Total Postpone	26
Inmate/Attorney	7
BPT Panel Conflict	1
CDCR Psych Eval	4
CDCR Hearing Notice	1
Quarantine/Inmate Illness	13

MONTH	ID#061
Mar-07	Martinez
Scheduled Hearings	47
Total Postpone	13
Inmate/Attorney	7
BPH to appoint attorney	1
BPH Investigation Requested	1
CDCR Psych Eval	4

MARTINEZ

% postponed to scheduled hearings 2/17/59

Attorney/Inmate

BPH Postponements

Panel conflict

To appoint attorney

Request Investigation

CDCR Postponement Issues

Psych Evaluations

Hearing Documents

Other

Quarantine/Inmate Illness

27%

12%

2%

7%

6%

Statement of Goals

- 1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority? How will you measure your success?**

I hope to acquire a challenging appointment with the Corrections Standards Authority, which will offer professional growth and give me an opportunity to assist the Schwarzenegger Administration in make sound decisions and potential changes that can benefit the State of California. I will measure my success by observing the beneficial changes that occur and the policies which produce accountability and conformity.

Mission/Reorganization

- 2. Do you believe CSA has the resources necessary to carry out the responsibilities it acquired as a result of the 2005 reorganization without compromising its other obligations?**

I do not believe CSA has the resources available since the reorganization in 2005. Adequate funding and staffing in conjunction with the new tasks and responsibilities are an issue. Appropriate funds or personnel were not attached to the transfer of theses duties. Funding is essential to the success of any program or delivery of services. CSA staff have managed to balance the workload and their obligations to local agencies are currently being met.

The reorganization established a January 1, 2007 deadline for CSA to set minimum standards for state correctional facilities.

- 3. Please describe the current status of this effort. If it has not been completed, please provide anticipated timeframes and any reasons for the delay.**

CSA is in the process of developing selection and training standards for state correctional peace officers and providing oversight in the review and revision of state Title 15 regulations. "The Corrections Standards Authority shall establish minimum standards for state and local correctional facilities. The standards for state correctional facilities shall be established by January 1, 2007." This amended legislation statute gave CSA new authority, it did not provide general funds for personnel years; CSA can not meet this mandate without adequate resources.

Senate Rules Committee

JUN 01 2007

Appointments

Standard setting for state classifications will continue to be met incrementally. Until fiscal priorities allow for the diversion of resources to this effort it will result in delays to the final completion of this project.

4. Please describe the current status of this responsibility; identify the anticipated timeframes for completion; and explain any unanticipated challenges that have been encountered.

CSA has been actively addressing the responsibilities set forth in SB 737. The Office of Inspector General's (OIG) follow-up review in October 2006 addressed two prior findings to determine progress in areas that were identified as deficient with the prior entity CPOST.

First, the OIG found that the executive board of CPOST had not met for nearly a year and the commission therefore was not performing its function of developing and monitoring selection and training standards for correctional peace officers.

Second, the OIG found that CPOST had made minimal progress in developing training standards and had inadequately monitored compliance with the few general curriculum standards that already existed and recommended (1) that the responsible entity (now CSA) should promptly conduct job analyses on all correctional peace officer classifications subject to the provisions of the Federal Uniform Guidelines on Employee Selection Procedures, and (2) that the responsible entity should develop and monitor compliance with appropriate training standards based on completed job analyses.

CSA is currently focusing on the primary classifications in the custody family consisting of CO/YCO/YCC. The job analysis for these positions will be completed in September 2007 and the final report on the analysis of these three classifications will be written by December 2007.

Following the job analysis, CSA will be focusing on the development of selection and training standards for these classifications. Research will be conducted towards the completion of job analyses for the remaining classifications. Based on the results of these analyses, standard development will occur for each position in the areas of selection and training. This process will take approximately five years to complete if projected resources are made available to CSA.

5. As a board member, is your input sought? Do you feel that you have sufficient information and time to appropriately address the policy issues that come before you? Please explain any ways in which you believe your role could be improved.

I believe my input is sought. I believe that as a board member I am given sufficient time to address policy issues. I believe my role could be improved if the board was allowed to hold a telephone conference before the bimonthly meetings without violating Bagley and Keene.

6. Do you believe the board meets frequently enough to accomplish its business?

I believe the board would benefit with an additional meeting prior to the bimonthly, in order to receive back-up information for agenda items.

7. It apparently has been the practice of CSA staff to hold a telephone conference call for board members before its bimonthly meetings. Please explain the purpose of these teleconferences, whether they comply with state open meeting laws, and whether any decisions are reached among members.

I have personally participated in one telephone conference prior to a bimonthly meeting. The purpose of the board member teleconferences was to provide a brief overview of the board agenda items to board members. If the board members felt additional information should be provided on the date of board meeting staff could be prepared to have this material available. No decisions were made during the telephone conference.

Local Facility Standards and Inspections

8. How often does your staff inspect a county jail or juvenile hall? Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?

CSA staff conduct inspections at local adult and juvenile facilities once every two years. In addition to these required biennial inspections, CSA provides ongoing technical assistance to facilities, based upon their needs. I am able to personally visit facilities and familiarize myself with the conditions. I am apprised of facility conditions via CSA staff. In the future I plan to conduct site visits when appropriate.

At its upcoming May meeting, the authority is scheduled to determine whether the Sacramento County Juvenile Hall is suitable for minors, due to overcrowding problems that affect the ability of the county to provide education.

9. Please explain how this issue came to the attention of the staff and the board. What are the board's options in dealing with situations such as this? Do you believe this an isolated problem, or do you expect other cases like this to take place?

This case is in litigation and pending a motion, I must decline to answer and defer you to my legal representative:

Douglas J. Woods, Deputy Attorney General
Department of Justice
Office of the Attorney General

(916) 324-4663

Currently the CSA does not have any authority to enforce its standards if it finds a facility out of compliance.

10. What do you believe the board's role should be in ensuring that CSA standards are enforced?

Titles 15 and 24 California Code of Regulations (CCR) minimum standards for local adult and juvenile detention facilities are not mandatory. CSA can find a facility in non-compliance with these regulations, but it does not have statutory authority to compel an agency to comply with all of the standards. If these regulations were mandated by the state, counties could file a SB90 claim, to receive cost reimbursement for a state mandated program. In the absence of a state mandated program, CSA forges a working relationship with the counties to assist them with complying with the regulations.

In a lawsuit filed in April 2006, the Prison Law Office alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

11. Please describe what steps CSA has taken to respond to the lawsuit and the status of the litigation.

Since this case is in litigation and pending a motion for Summary Judgment or Summary Adjudication in the County of San Francisco on July 13, 2007, you should decline to answer this question and defer to your legal representative:

Douglas J. Woods, Deputy Attorney General
Department of Justice
Office of the Attorney General
(916) 324-4663

Among many other requirements, the CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of the inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

12. What sort of oversight does the board provide to ensure that the inspections

are complete and accurate?

CSA inspectors rely upon a report from the county superintendent of schools stating how the school program complies with Title 15, Section 1370 Education Program. During an inspection of a juvenile facility, CSA staff will visit each academic classroom to verify the number of minors attending class, and to ensure that the number of minors does not exceed the maximum of 20 as prescribed in Title 24, Section 460A.1.12 Academic Classrooms. They will also verify the number of classroom instructors teaching the minors.

CSA staff will interview the teachers assigned to the juvenile facility to ensure that minors are enrolled no later than three school days after admission. CSA staff will inspect each living unit, while school is in session, and they check to see if any minors are in their rooms. If minors are not attending school, they will interview staff to establish if the minor is sick, if they have been removed from class for disciplinary reasons, or if they have been expelled from school in accordance with the Education Code. Staff will follow up with an interview of the minor to hear their version as to why they are not attending school.

Grant Administration

- 13. What does the board do to ensure that funds are being spent on the stated purpose of the grants. How does the board determine whether programs are achieving the desired results?**

To ensure that grant and program funds are expended in accordance with program requirements, the CSA has provided oversight that is consistent with federal and state legislative requirements, Generally Accepted Accounting Principles, and prudent administrative practices, whenever possible. The CSA board has charged staff with regular monitoring of programs in most instances. The CSA oversight exists at several stages of program development and implementation.

CSA is not directly involved in the disbursement of funds to counties for the Juvenile Justice Crime Prevention Act (JJCPA), we are not considered the fiduciary agent for this program. CSA coordinates administration of this program with the State Controller's Office (SCO). The SCO administers the JJCPA funds and disburses them directly to each county and ultimately accounts for any unspent monies.

- 14. Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the board protect against potential conflicts of interest?**

To protect against potential conflicts of interest during the review and approval of competitive grant processes, CSA Board Members and State Advisory Group Members must recuse themselves from the review, rating, or judging of proposals or situations in which a bias may be perceived.

15. What is the board's role in ensuring that the state advisory group meets on a regular schedule and provides advice in a timely fashion? What, if anything, does it currently do to ensure that they do meet?

To ensure that the State Advisory Group meets on a regular schedule and is accountable to the larger CSA Board, the SAG has been structured as a standing ESC of CSA. The ESC model, which has been utilized at CSA for over 25 years, is a proven methodology for better decision-making, and a way to get things done.

As a standing ESC, the SAG has developed a quarterly meeting schedule for FY 07/08 and will attempt to coordinate its schedule with that of CSA whenever possible. At the May 10, 2007 CSA meeting, a draft meeting schedule was presented as part of an update regarding regular SAG business.

To ensure that the SAG continues to meet and is on track with deliverables regarding its role and responsibilities, the SAG (as an ESC) will take direction from the CSA regarding juvenile justice and delinquency issues, and then make recommendations to CSA regarding specific action(s) when necessary. CSA staff has provided regular updates to the CSA regarding SAG activity.

Responses of CSA Board Member John Ingrassia

Statement of Goals

- 1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority? How will you measure your success?**

My primary goal is to work closely with county sheriff's, directors of corrections (for both local and state run facilities) and chief probation officers, as well as other local officials and community based service providers to achieve continuous improvement in the conditions of local adult and juvenile detention facilities and state prisons. I also strive to achieve continuous improvement in the delivery of effective local and state corrections programs.

My success will be measured by ensuring I do more than simply attend board meetings and vote on issues brought before us. For example, I volunteered to Chair an Executive Steering Committee (ESC) tasked with amending Title 15 Local Adult and Juvenile Regulations as required by Assembly Bill 478 and I was recently selected to serve as Chair of the 2008 Titles 15 & 24 Adult Regulations Revision ESC. The quality and effectiveness of the finished product of these ESC's and other work I complete will provide me the opportunity to measure my success.

Mission/Reorganization

On July 1, 2005, as part of the governor's reorganization of the Youth and adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). The CSA has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given the additional responsibility of setting minimum standards for state correctional facilities. The CSA also assumed the responsibility (previously that the Commission on Correctional Peace Officers' Standards and Training) of overseeing correctional peace officer standards and training.

The CSA consists of 19 members, 14 of whom are appointed by the Governor. After the 2005 reorganization, the board did not meet for nine months due to the lack of sufficient members for a quorum.

- 2. Do you believe CSA has the resources necessary to carry out the responsibilities it acquired as a result of the 2005 reorganization without compromising its other obligations?**

Senate Rules Committee

JUN 01 2007

Appointments

I believe the CSA is currently tasked with an immense workload and currently has limited staffing and funding resources allocated to them to address the additional responsibilities they assumed as a result of the 2005 legislation. This legislation assigned new tasks and responsibilities to the CSA but it is my opinion that sufficient funds and personnel were not attached to the transfer of these duties.

Thus far, it has been my observation that CSA staff has managed to balance the workload and ensure their obligations to local agencies continue to be met. However, sustaining these efforts will become increasingly challenging if resource allocations do not match the demand on services. This imbalance has undoubtedly impacted the speed by which these legislative mandates are attained and will eventually impact ongoing services provided to local agencies.

The reorganization established a January 1, 2007 deadline for CSA to set minimum standards for state correctional facilities.

- 3. Please describe the current status of this effort. If it has not been completed, please provide anticipated time frames and any reasons for the delay.**

While the legislative changes amended statute and gave the CSA new authority, it did not provide general funds for additional personnel and therefore the CSA did not meet the January 1, 2007 mandate and will not be able to in the near future without adequate resources. However, CSA staff has been routinely providing informational updates on the standard setting responsibilities for state peace officers (Job Components Analysis Project).

Presently, the job analyses for the primary peace officer classifications consisting of CO/YCO/YCC are scheduled for completion in September 2007 with a final report on these classifications being available in December of 2007. This analysis will serve as the foundation for which standards will be developed. A five year work plan had been designed by CSA staff for the project but resource allocation and redirection of priorities has modified the timeline of completion.

The CSA is in the process of developing selection and training standards for state correctional peace officers and providing oversight in the review and revision of state Title 15 regulations. A new exam for state correctional peace officers was completed in December of 2006. CDCR implemented the exam in January of 2007 and staff has designed an item bank for future versions of the test for the purpose of maintaining exam security and validity.

Standard setting goals for state classifications will continue to be met incrementally until fiscal priorities allow for the diversion of resources to project.

Prior to the 2005 corrections reorganization, the Commission on Peace Officer Standards and Training was responsible for developing selection and training standards for correctional peace officers. In a 2005 special review, the Office of the Inspector General identified a number of serious deficiencies which had prevented the Commission from meeting this obligation. In October 2006, after these functions had been transferred to CSA, the Inspector General conducted a follow-up review and reported that most of the earlier recommendations still had not been implemented and that CSA had not yet completed the job analyses necessary to establish the required training standards for correctional peace officers. According to CSA at the time of this review, the new training standards would not be released until December 2008.

4. Please describe the current status of this responsibility; identify the anticipated time frames for completion; and explain any unanticipated challenges that have been encountered.

The bulk of CSA's workload is carried out by the staff although most decisions require approval by the CSA board.

In July of 2005, the CSA initiated a contract with CSUS for services to assist in the development of selection and training standards. Thus far, I have been made aware that the following has been accomplished:

- Literature review
- Data collection on current positions
- Development of the project methodology
- Development of a project work plan
- Conducted stakeholder meetings and presentations
- Developed Task Consolidation List
- Developed KSAO Consolidation List
- Data collection on sample size and demographics
- Development of consolidated entry-level exam for CO/YCO/YCC positions
- Developed Budget Concept Proposal (BCP) requesting additional resources
- Developed Job Analysis Questionnaire (JAQ)
- Developed Task Rating Scales
- Conducted Task Rating Workshops with incumbents
- Currently conducting site visits and workshops with incumbents and supervisors for validation of task and knowledge/skills/abilities and other characteristics (KSAO) statements

Originally, CSA staff was going to focus on completing all the job analyses for the classifications and move on to setting the standards for selection and training. However,

CSA staff was required to adjust its approach based on agency need and resource availability. CSA is now focusing on the primary classifications of CO/YCO/YCC. The job analysis for these positions is scheduled to be completed in September 2007 and the final report on the analysis of these three classifications will be written by December 2007.

Following the job analysis, CSA will focus on the development of selection and training standards for these classifications. Additional job clusters will be addressed as resources allow. Research will be conducted towards the completion of job analyses for the remaining classifications. Based on the results of these analyses, standard development will occur for each position in the areas of selection and training. Compliance monitoring will be developed in the final phase of the project to ensure adherence to the established standards.

This process will take approximately five years to complete if projected resources are made available to CSA. Currently, budget proposals to address the project's resource needs have been submitted and are pending approval. Last year's funding proposal was denied.

The OIG recommended that CSA continue to diligently develop job analyses to establish selection and training standards for the department's correctional peace officer classification while considering alternatives to expedite the project's completion date. The OIG also recommended that CSA continue to develop training standards based on completed job analyses and monitor compliance with the standards once they are established.

I believe the CSA is in compliance with the above stated OIG's recommendations.

- 5. As a board member, is your input sought? Do you feel that you have sufficient information and time to appropriately address the policy issues that come before you? Please explain any ways in which you believe your role could be improved.**

I believe CSA staff does an excellent job of soliciting input from all board members. During my almost nine months serving on the board, information regarding agenda items has been provided at least one week prior to scheduled board meetings. The information provided is more than sufficient to appropriately prepare to address policy issues that come before the Board. E-mails regarding legislative changes and proposals are provided via email on an almost daily basis and are very helpful in keeping board members informed.

Based upon the issues that thus far have come before me as a board member, I do not believe any improvements need to be made to my role. In the future, as more issues regarding state institutions come before the board, it would be helpful to tour state facilities and interact with correctional staff.

Do you believe the board meets frequently enough to accomplish its business?

Thus far, I believe board meetings have been held frequently enough to accomplish our business. The agenda for these meetings can generally be completed within two hours.

- 6. It apparently has been the practice of CSA staff to hold a telephone conference call for board members before its bimonthly meetings. Please explain the purpose of these teleconferences, whether they comply with state open meeting laws, and whether any decisions are reached among members.**

Based upon the advice on CDCR Office of Legal Affairs, the practice of holding telephone conference calls was discontinued prior to the March 8, 2007 CSA board meeting. The purpose of the board member teleconferences was to provide a brief overview of agenda items to board members. This gave board members an opportunity to request additional information to be provided to them by CSA staff at or before the date of the meetings. Prior to any discussion during the teleconferences, staff would inform CSA members that they could not discuss amongst themselves, or divulge how they might vote on any agenda action item.

Local Facility Standards and Inspections

- 7. How often does your staff inspect a county jail or juvenile hall? Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?**

CSA staff conduct inspections at local adult and juvenile facilities once every two years, in accordance with Penal Code § 6031.1 and Welfare and Institutions Code § 209 and 885. In addition to these required biennial inspections, the CSA provides ongoing technical assistance to facilities.

Thus far, I have not requested or been provided an opportunity to visit facilities to familiarize myself with conditions. I learn about the issues and conditions from information and reports provided by CSA staff.

At its upcoming May meeting, the authority is scheduled to determine whether the Sacramento County Juvenile Hall is suitable for minors, due to overcrowding problems that affect the ability of the county to provide education.

- 8. Please explain how this issue came to the attention of the staff and the board. What are the board's options in dealing with situations such as this? Do you believe this an isolated problem, or do you expect other cases like this to take place?**

I have or at some point in time will be individually named as a defendant in the Candace Waters v. Corrections Standards Authority. Since this case is currently in litigation, I must decline to answer this question and defer to you to the CSA legal representative:

Douglas J. Woods, Deputy Attorney General
Department of Justice
Office of the Attorney General
(916) 324-4663

Currently the CSA does not have any authority to enforce its standards if it finds a facility out of compliance.

9. What do you believe the board's role should be in ensuring that CSA standards are enforced?

In the absence of a state mandated program, the CSA builds working relationships with counties to assist them in their efforts to comply with the regulations. This relationship between CSA and the counties includes ongoing dialogue, and allows for incremental improvement by counties to achieve full compliance with all applicable Titles 15 and 24 Regulations.

Since Titles 15 and 24 California Code of Regulations (CCR) minimum standards for local adult and juvenile detention facilities are not mandatory, the CSA can only find a facility in non-compliance with these regulations. The CSA does not have statutory authority to compel an agency to comply with all of the standards and I do not believe the CSA should have this authority. It is in the best interest of the counties to obtain complete compliance with the regulations and the Board's role should continue to be that of forging a relationship with the counties to assist them in their compliance efforts.

In a lawsuit filed in April 2006, the Prison Law Office alleged that, "The GSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the 'aw.'" It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

10. Please describe what steps GSA has taken to respond to the lawsuit and the status of the litigation.

I have or at some point in time will be individually named as a defendant in the Candace Waters v. Corrections Standards Authority. Since this case is currently in litigation, I must decline to answer this question and defer to you to the Board legal representative:

Douglas J. Woods, Deputy Attorney General
Department of Justice
Office of the Attorney General
(916) 324-4463

Among many other requirements, the CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of the inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

11. What sort of oversight does the board provide to ensure that the inspections are complete and accurate?

CSA inspectors rely upon a report from the county superintendent of schools stating how the school program complies with Title 15, Section 1370 Education Program. During an inspection of a juvenile facility, CSA staff will visit each academic classroom to verify the number of minors attending class, and to ensure that the number of minors does not exceed the maximum of 20 as prescribed in Title 24. They will also verify the number of classroom instructors teaching the minors.

CSA staff conducts interviews with teachers assigned to the juvenile facilities to ensure minors are enrolled within three school days of admission. CSA staff inspects each living unit, while school is in session, and they check to see if any minors are in their rooms. If minors are not attending school, they will interview staff to establish if the minor is sick, if they have been removed from class for disciplinary reasons, or if they have been expelled from school in accordance with the Education Code. Staff will follow up with an interview of the minor to hear their version as to why they are not attending school.

Grant Administration

The CSA administers various grant programs, including the juvenile justice crime prevention act and the mentally ill offenders crime reduction grant program, among other state and federal grants.

12. What does the board do to ensure that funds are being spent on the stated purpose of the grants? How does the board determine whether programs are achieving the desired results?

To ensure that grant and program funds are expended in accordance with program requirements, the CSA has provided oversight that is consistent with federal and state legislative requirements. The CSA board has charged staff with regular monitoring of programs in most instances. The CSA oversight exists at several stages of program development and implementation, including but not limited to:

- Appointment of CSA members, SAG members, and Subject-Matter Experts to Executive Steering Committees (ESC) charged with program development, proposal rating, and identification of performance outcome measures;
- Approval of initial program timelines and reporting schedules regarding individual progress reporting and submission of quarterly fiscal invoices when applicable;
- Utilization of state contracts, and/or Grant Agreements, approved locally by Governing Boards (Board of Supervisors, City Council or Board of Directors) and signed by local department heads ensuring that program activities, proposed budgets, and desirable programmatic and fiscal benchmarks and outcomes are formalized;
- Presentation of updates regarding programmatic and fiscal status at regularly scheduled CSA meetings;
- Regular monitoring and technical assistance of projects by CSA staff as required; and
- Review and approval of annual statewide reports including summary of both fiscal and programmatic findings, as required.

Since the CSA is not directly involved in the disbursement of funds to counties for the Juvenile Justice Crime Prevention Act (JJCPA), they are not considered the fiduciary agent for this program. The CSA coordinates administration of this program with the State Controller's Office (SCO). The SCO administers the JJCPA funds and disburses them directly to each county and ultimately accounts for any unspent monies. The CSA is responsible for the review of each county's plan and development of the annual statewide report on legislatively required outcomes.

13. Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the board protect against potential conflicts of interest?

To protect against potential conflicts of interest during the review and approval of competitive grant processes, CSA Board Members and State Advisory Group Members must remove themselves from the review, rating, or judging of proposals or situations in which a bias may be perceived. This removal most often occurs when a board member or

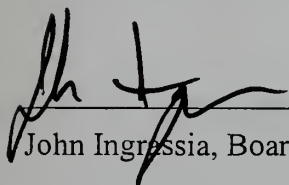
SAG member's particular agency or department, or affiliated agencies or departments from within the same jurisdiction, are entered into competition for grant funds.

To recommend how federal juvenile justice grants are spent, the U. S. Department of Justice requires that each state have a state advisory group. The governor appoints the 15 members of this group, which advises the Corrections Standards Authority on matters related to federal juvenile justice grant programs. However, until earlier this year, the California group, now known as the State Advisory Group on Juvenile Justice and Delinquency had not met for several years.

14. What is the board's role in ensuring that the state advisory group meets on a regular schedule and provides advice in a timely fashion? What, if anything, does it currently do to ensure that they do meet?

To ensure that the State Advisory Group meets on a regular schedule and is accountable to the CSA Board, the SAG has been structured as a standing ESC of CSA. The ESC model has been utilized at CSA for over 25 years and is a proven methodology for better decision-making.

As a standing ESC, the SAG has developed a quarterly meeting schedule for FY 07/08 and will attempt to coordinate its schedule with that of CSA whenever possible. To ensure that the SAG continues to meet and is on track with deliverables regarding its role and responsibilities, the SAG (as an ESC) will take direction from the CSA regarding juvenile justice and delinquency issues, and then make recommendations to CSA regarding specific action(s) when necessary. CSA staff has provided regular updates to the CSA Board regarding SAG activity.



John Ingrassia, Board Member

CALIFORNIA LEGISLATURE

MEMBERS

ROY ASHBURN
VICE-CHAIR

GILBERT CEDILLO

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ALEX PADILLA



GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 11, 2007

Kimberly A. Petersen

Dear Ms. Petersen:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, June 13, 2007, 2007. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by June 1st.

We would also like to receive an updated Form 700, Statement of Economic Interest, by June 1st. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Statement of Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority? How will you measure your success?*

Mission/Reorganization

On July 1, 2005, as part of the governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). The CSA has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given the additional responsibility of setting minimum standards for state correctional facilities. The CSA also assumed the responsibility (previously that of the Commission on Correctional Peace Officers' Standards and Training) of overseeing correctional peace officer standards and training.

The CSA consists of 19 members, 14 of whom are appointed by the Governor. After the 2005 reorganization, the board did not meet for nine months due to the lack of sufficient members for a quorum.

2. *Do you believe CSA has the resources necessary to carry out the responsibilities it acquired as a result of the 2005 reorganization without compromising its other obligations?*

The reorganization established a January 1, 2007 deadline for CSA to set minimum standards for state correctional facilities.

3. *Please describe the current status of this effort. If it has not been completed, please provide anticipated timeframes and any reasons for the delay.*

Prior to the 2005 corrections reorganization, the Commission on Peace Officer Standards and Training was responsible for developing selection and training standards for correctional peace officers. In a 2005 special review, the Office of the Inspector General identified a number of serious deficiencies which had prevented the Commission from meeting this obligation. In October 2006, after these functions had been transferred to CSA, the Inspector General conducted a follow-up review and reported that most of the earlier recommendations still had not been implemented and that CSA had not yet completed the job analyses necessary to establish the required training standards for correctional peace officers. According to CSA at the time of this review, the new training standards would not be released until December 2008.

4. *Please describe the current status of this responsibility; identify the anticipated timeframes for completion; and explain any unanticipated challenges that have been encountered.*

The bulk of CSA's workload is carried out by the staff although most decisions require approval by the CSA board.

5. *As a board member, is your input sought? Do you feel that you have sufficient information and time to appropriately address the policy issues that come before you? Please explain any ways in which you believe your role could be improved.*
6. *Do you believe the board meets frequently enough to accomplish its business?*

7. *It apparently has been the practice of CSA staff to hold a telephone conference call for board members before its bimonthly meetings. Please explain the purpose of these teleconferences, whether they comply with state open meeting laws, and whether any decisions are reached among members.*

Local Facility Standards and Inspections

8. *How often does your staff inspect a county jail or juvenile hall? Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?*

At its upcoming May meeting, the authority is scheduled to determine whether the Sacramento County Juvenile Hall is suitable for minors, due to overcrowding problems that affect the ability of the county to provide education.

9. *Please explain how this issue came to the attention of the staff and the board. What are the board's options in dealing with situations such as this? Do you believe this an isolated problem, or do you expect other cases like this to take place?*

Currently the CSA does not have any authority to enforce its standards if it finds a facility out of compliance.

10. *What do you believe the board's role should be in ensuring that CSA standards are enforced?*

In a lawsuit filed in April 2006, the Prison Law Office alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

11. *Please describe what steps CSA has taken to respond to the lawsuit and the status of the litigation.*

Among many other requirements, the CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of the inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

12. *What sort of oversight does the board provide to ensure that the inspections are complete and accurate?*

Grant Administration

The CSA administers various grant programs, including the juvenile justice crime prevention act and the mentally ill offenders crime reduction grant program, among other state and federal grants.

13. *What does the board do to ensure that funds are being spent on the stated purpose of the grants. How does the board determine whether programs are achieving the desired results?*
14. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the board protect against potential conflicts of interest?*

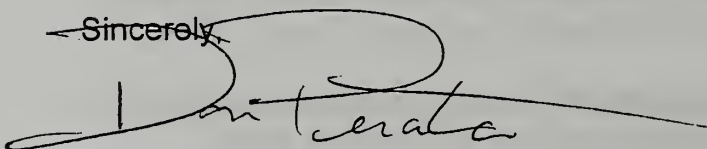
To recommend how federal juvenile justice grants are spent, the U. S. Department of Justice requires that each state have a state advisory group. The governor appoints the 15 members of this group, which advises the Corrections Standards Authority on matters related to federal juvenile justice grant programs. However, until earlier this year, the California group, now known as the State Advisory Group on Juvenile Justice and Delinquency, had not met for several years.

15. *What is the board's role in ensuring that the state advisory group meets on a regular schedule and provides advice in a timely fashion? What, if anything, does it currently do to ensure that they do meet?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420 State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata", with a long horizontal flourish extending to the right.

DON PERATA

DP:MG

May 25, 2007

The Honorable Don Perata
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Perata:

Below are my answers to your questions regarding my confirmation to the Corrections Standards Authority Board. Also, included is a copy of my most recent Form 700.

Sincerely,

Kim Petersen

Statement of Goals

1. As the Victim Advocate member of the Corrections Standards Authority Board, my goal is to assure that the rights, interests and concerns of victims are considered in decisions made by the Board. Crime victims often feel alone, forgotten and re-victimized by the "system." My goal is to create awareness of victims' needs to the Board as we make decisions that impact victims' lives. These decisions may include establishing the standards and training of correctional officers, standards for local and state facilities and the administration of grant funds. The success of my goal will be measured both by the Board's responsiveness to my input regarding victims and victims' input. Staff at the CDCR Office of Victim and Survivor Rights and Services regularly receive input from victims regarding issues affecting their lives. I will check with the office on a regular basis to keep up to date on the issues and concerns of victims in relation to CDCR.
2. Corrections Standards Authority has an immense amount of responsibility as a result of the reorganization in 2005. Effectively managing the additional responsibility requires adequate funding and personnel. The CSA cannot be expected to be tasked with a greater workload without also receiving the funding and personnel. Additional funding is critical in order to continue to maintain high level of quality demonstrated by CSA over the years.
3. CSA is working to develop selection and training standards for correctional officers and is assisting with the review and revision of state Title 15 regulations. This work is

Senate Rules Committee

MAY 31 2007

Appointments

being conducted as CSA continues to provide services to 576 local detention facilities throughout the state. It is a tremendous challenge for CSA to maintain its high level of service while assuming these additional responsibilities. When CSA was given this authority, additional funding for personnel was not provided.

CSA staff has presented informational updates on the standard setting responsibilities for state peace officers. Established research practices within the industry are used to develop these standards. This detailed process requires time, staffing and funding for consultant expertise. The industry standard for completion of a job analysis for a classification is 12 months. Considering CSA was tasked with analyzing 47 different peace officer classifications, the timeline was insufficient.

Currently, the job analyses for the primary peace officer classifications of CO/YCO/YCC are scheduled for completion in September 2007 with a final report on these classifications to be available in December of 2007. While a five year work plan for the project has been designed by CSA staff, allocation of resources and redirected priorities has caused CSA to modify methodology and completion dates.

In 2006 CSA staff was requested to examine the CO/YCO/YCC written exams in order to determine the feasibility of combining the exams into one exam. After review, it was determined that an interim exam was needed until a full job analyses was conducted. The development of this exam was completed in December of 2006. In January of 2007, CDCR implemented the exam and designed an item bank for future versions of the test in order to assure security and validity.

4. When CSA replaced CPOST, it was required to change its composition from six members to nineteen members. CSA's ability to hold meetings was dependent upon the executive management and the Governor's Office to select and appoint board members in order to establish a quorum. At the time of the OIG review in October of 2006, seventeen of the nineteen board members had been appointed by the Governor and CSA was found to be in compliance. The OIG also recommended that the CSA ensure that board members regularly attend board meetings. This has occurred since July 2006.

Additionally, the OIG recommended that CSA should promptly conduct job analyses on all correctional peace officer classifications according to the provisions of the Federal Uniform Guidelines on Employee Selection Procedures, and that CSA should develop and monitor compliance with training standards based on completed job analyses. CSA began its work on these issues in July of 2005 and initiated a contract with CSUS for assistance in the development of selection and training standards. This detailed process requires a great deal of time. CSA in conjunction with CSUS has accomplished the following:

Literature review

Data collection on current positions

Development of the project methodology

Development of a project work plan

Conduct stakeholder meetings and presentations
Developed Task Consolidation List
Developed KSAO Consolidation List
Data collection on sample size and demographics
Development of consolidated entry-level exam for CO/YCO/YCC positions
Developed Budget Concept Proposal requesting additional resources
Developed Job Analysis Questionnaire
Developed Task Rating Scales
Conducted Task Rating Workshops with incumbents
Currently conducting site visits and workshops with incumbents and supervisors for validation of task and knowledge/skills/abilities and other characteristics statements

Due to the magnitude of this project, CSA is using an innovative approach, clustering classifications that have overlapping tasks and KSAOs. CSA is focusing on the primary classifications of CO/YCO/YCC. The job analysis for these positions will be completed in September 2007 and the final report will be written by December of 2007. CSA will then focus on the development of selection and training standards for these classifications. This process is dependent upon resources to conduct the research and access to consultant expertise. Additional job clusters will be addressed as resources allow.

If projected resources are available, this will take approximately five years to complete. Budget proposals addressing the needs of this project have been submitted and are pending approval. Due to the vast needs and priorities of CDCR, last year's funding proposal was denied.

Regarding the OIG findings that the conducting of job analyses had been partially implemented and that the development of training standards had not been implemented, it was explained that job analysis is the critical first step to developing standards and that training standards cannot be developed until job analyses are completed.

The OIG recommended (1) that CSA continue to diligently develop job analyses to establish selection and training standards for the department's correctional peace officer classification while considering alternatives to expedite the project's completion date; and (2) that CSA continue to develop training standards based on completed job analyses and monitor compliance with the standards once they are established. CSA is in compliance with these recommendations from the OIG.

5. As a new member to the Board, I have attended four meetings and have spent time learning about the CSA and its responsibilities. I have felt encouraged to provide input on many issues. The CSA staff has been very thorough in providing information to the Board. On the couple of occasions that I have requested additional information prior to making a policy decision, the staff has provided the information to me in a timely manner. Thus far I feel that I have had sufficient information and time to address policy issues. My role on the Board could be improved by my serving on committees where the needs and concerns of victims are being directly or indirectly impacted.

6. To date it appears that the Board meets frequently enough to accomplish our business and responsibilities. I feel that we have been able to cover a tremendous amount of information and decision making without feeling rushed or under-informed.

7. I personally participated in three of the telephone conference briefings (9/13/06, 11/6/06, 1/11/07). During these briefings the staff provided an overview of the agenda items and asked whether additional information was necessary prior to the meeting. Occasionally Board members requested additional information or materials in order to make a more informed decision. No votes were discussed during any of the conference calls in which I participated. Additionally, there was never a quorum. On 9/13/06 there was only one board member besides myself; on 11/6/07 I was the only board member on the call; and on 1/11/07, there were five board members who participated in the call. In the open meeting laws, it is stated that if a quorum is met in a study session, it should be treated as a meeting. Additionally, it states that pre-meeting briefings of a city council a half hour prior to a meeting were meetings subject to open meeting laws. As a lay person, not a lawyer, it is difficult for me to determine whether these telephone conference calls comply with open meeting laws. The practice of telephone conference calls was discontinued prior to the March 8, 2007 board meeting on the advice of CDCR Office of Legal Affairs.

8. CSA staff conduct inspections at local adult and juvenile facilities once every two years in accordance with Penal Code section 6031.1 and Welfare and Institutions Code section 209 and 885. In addition to these required inspections, CSA provides ongoing technical assistance to facilities based upon their needs.

While the Board has been provided two opportunities to tour facilities following Board meetings, I was unable to participate in the tours due to other commitments. Prior to becoming a board member, I have had the opportunity to visit several local and state facilities. I hope to be able to participate in upcoming facility tours. CSA staff have updated the Board on issues regarding facilities.

9. Due to pending litigation, I defer any questions to my legal representative.

Douglas J. Woods, Deputy Attorney General
Department of Justice
Office of the Attorney General
(916) 324-4663

10. While CSA can and has found facilities in non-compliance with Titles 15 and 24, it does not have statutory authority to compel an agency to comply with the standards since they are not mandatory. If these regulations were mandated by the state, counties could file a SB90 claim to receive reimbursement for a state mandated program. Since these regulations are not state mandated, CSA works with the counties to assist them with compliance regulations. As a board member, it is very frustrating to hear about facilities that are out of compliance, but have no power or authority to mandate compliance.

11. Due to the pending litigation, I defer any questions to my legal representative.

Douglas J. Woods, Deputy Attorney General
Department of Justice
Office of the Attorney General
(916) 324-4663

12. The county superintendent of schools completes a report stating how the school program complies with Title 15, Section 1370 Education Program. CSA inspectors rely on the information in this report. Additionally, as part of a juvenile facility inspection, CSA staff visit each classroom to verify the number of minors attending class and to ensure that the number of minors falls within the allotted 20 students per class as stated in Title 24, Section 460A.1.12 Academic Classrooms. CSA staff also verifies the number of classroom teachers instructing the students.

In addition, CSA staff conduct interviews with teachers to verify that minors are enrolled within three days of admission and inspect each living unit while school is in session to confirm that students are in the classrooms. If minors are not in school, CSA staff interview facility staff to determine if the minor is sick, if they have been removed for disciplinary reasons or have been expelled from school. Staff then follow up with an interview of the minor to hear their reason for not attending school.

In the past, the CSA board has relied upon the deputy director of the Facility Standards and Operations Division to review the inspection reports for completeness. CSA Board members have access to inspection reports and can speak directly to the field representatives responsible for the inspections.

13. The CSA has implemented oversight requirements that are consistent with federal and state legislative requirements, Generally Accepted Accounting Principles, and prudent administrative practices whenever possible. The CSA board has required the staff to regularly monitor the programs. CSA oversight exists at several stages including (1) Appointment of CSA members, SAG members, and Subject-Matter Experts to Executive Steering Committees responsible for program development, proposal rating and identification of performance outcome measures (2) Approval of timelines and reporting schedules (3) Utilization of state contracts, and/or Grant Agreements, approved by local Governing Boards and signed by local department heads in order to ensure that program activities, budgets and outcomes are formalized (4) Presentation of programmatic and fiscal updates at regularly scheduled CSA meetings (5) Regular monitoring and technical assistance of projects by CSA staff as required and (6) Review and approval of annual statewide reports including a summary of both fiscal and programmatic findings.

The Juvenile Justice Crime Prevention Act is administered through the State Controller's Office with assistance from CSA. These funds are disbursed directly from the State Controller's Office to each county and the SCO accounts for any unspent monies. CSA

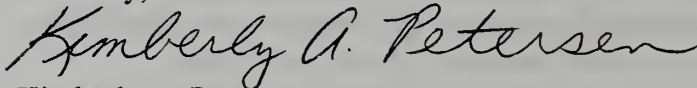
is responsible for the review of each county's plan and development of the annual statewide report on legislatively required outcomes.

14. In order to protect against potential conflicts of interest during the review and approval of grant proposals, CSA Board members and State Advisory Group Members must recuse themselves from the review, rating, or judging of proposals in which there may be a perceived bias. This generally occurs when a board member or SAG member's agency, affiliates of their agency, or agencies within their jurisdiction are involved in the competitive grant process.

15. The State Advisory Group has been structured as an Executive Steering Committee of the Corrections Standards Authority in order to ensure that the SAG meets on a regular schedule and is accountable to the CSA Board. As a standing ESC, the SAG developed a quarterly meeting schedule for FY 2007/2008 attempting to coordinate its schedule with CSA whenever possible. A draft of the FY 07/08 meeting schedule was presented at the May 10, 2007 CSA meeting.

CSA staff have provided regular updates to the CSA board regarding SAG activities. Three CSA board members are appointed to the SAG. Additionally, CSA requires that the SAG Chairperson and Co-Chairperson are CSA members in good standing.

Sincerely,

A handwritten signature in cursive script that reads "Kimberly A. Petersen".

Kimberly A. Petersen

Board Member

Corrections Standards Authority

Responses To Questions Asked By
Senate Rules Committee
In Anticipation Of My Confirmation As Commissioner
Corrections Standards Authority (formerly, Peace Officer Standards and
Training)

Bill Powers, District One Supervisor
Plumas County, California
May 29, 2007

1. Statement of Goals.

My goals on CSA are:

- A. To represent the interests and concerns of California Counties as they relate to facility and training standards in both state and local prison and jail facilities. Public safety, as well as safe working conditions for agency personnel, is equal to inmate well-being and inmate personnel. The State has taken an important step by adding "Rehabilitation" to the role of Corrections, and my intent is to see that responsibility developed.
- B. To ensure that juveniles are treated fairly and provided with education, vocational, and rehabilitation opportunities that attempt to immediately upgrade their circumstances while under the jurisdiction of State or local agencies. My background of 18 years in continuation high school education gives me a sense that juveniles with active minds can succeed if redirected away from destructive and negative environments, even if they've been previously indoctrinated in other ways.
- C. To assure that local and rural issues are included in the State Plan for new or improved facilities and services.

2. Do you believe CSA has the resources necessary to carry out the responsibilities it acquired as a result of the 2005 reorganization without compromising its other obligations?

I have worked with the CSA staff for half a year now, and find them to be very efficient and extremely hardworking individuals. However, I am looking to the tasks ahead and see a failure of funding and personnel to carry out the new, larger mission. In virtually all local facilities, the "Rehabilitation" component needs to be integrated with County and City services in health and mental health care, alcohol and drug treatment, academic and vocational training, and social services for probationers, parolees and their families. These needs will require intensive staff time for mentoring and oversight. For the CSA to have regulating authority over this entire wing of the State's requirements, it will need increased staffing and a cohesive interface with other integrating agencies.

3. The reorganization established a January 1, 2007 deadline for CSA to set minimum standards for state correctional facilities. Please

describe the current status of this effort. If it has not been completed, please provide anticipated timeframes and any reasons for the delay.

SB 737 amended Penal Code Section 6030 that set the deadline to establish the minimum standards, but adequate staff and dollars were not provided. The existing staff has made progress toward the task, but has other equally important mandates that require meeting deadlines as well. To affect these minimum standards in a timely manner increases in personnel and resources are required. While this most recent set of standards has been delayed, much work on combining qualifying exams for peace officer classifications and is scheduled for completion later this year. There are 47 different peace officer classifications. Corrections Officer, Youth Corrections Officer, and Youth Corrections Counselor will be completed by September of this year, and the comprehensive revamping and consolidation process for other areas is on a timeline that is in turn dependent on additional funding of resources. The proposed completion of the task is five years and will be both daunting and time-consuming.

4. Please describe the current status of [work on training standards for correctional peace officers, etc.] of this responsibility; identify the anticipated timeframes for completion; and explain any unanticipated challenges that have been encountered.

I consulted staff as to the current status of product on these issues. In October 2006, The OIG highlighted two prior finding from 2005:

Finding #1. The OIG found that the executive board of CPOST had not met for nearly a year and the commission therefore was not performing its function of developing and monitoring selection and training standards for correctional peace officers.

The requirement through SB 737 that the new CSA would restructure from a six to 19 member commission caused a time delay and consequent failure to meet deadlines of setting the abovementioned training standards documents. This year, CSA is making up significant ground and appointments for the 19 seats are nearly complete.

Finding #2. The OIG found that CPOST had made minimal progress in developing training standards and had inadequately monitored compliance with the few general curriculum standards that already existed and recommended (1) that the responsible entity (now CSA) should promptly conduct job analyses on all correctional peace officer classifications subject to the provisions of the Federal Uniform Guidelines on Employee selection Procedures, and (2) that the responsible entity should develop and monitor compliance with appropriate training standards based on completed job analyses.

In response to the second finding specifically, CSA initiated a contract with Cal-State-Sacramento that has so far accomplished 14 quantifiable objectives toward a final product cluster:

- Literature review
- Data collection on current positions
- Development of the project methodology
- Development of a project work plan
- Conducted stakeholder meetings and presentations
- Developed Task Consolidation List
- Developed KSAO consolidation List
- Data collection on sample size and demographics
- Development of consolidated entry-level exam for CO/YCO/YCC positions
- Developed Budget Concept Proposal (BCP) requesting additional resources
- Developed Job Analysis Questionnaire (JAQ)
- Developed Task Rating Scales
- Conducted Task Rating Workshops with incumbents
- Currently conducting site visits and workshops with incumbents and supervisors for validation of task and knowledge/skills/abilities and other characteristics (KSAO) requirements

By clustering classifications that have overlapping tasks, CSA is attempting to condense the myriad considerations of correctly fit Federal Uniform Guidelines on Employee Selection Procedures.

This huge scope of work has been attempted by staff, while addressing existing duties and responsibilities. As the work progresses, one of the commission's needs will be to recommend additional staff and resources or outsourcing for more efficient and timely project completion.

Staff estimates the process will take approximately five years to complete, if requests for additional resources are fulfilled. Previous requests were left unfunded, leading to further delays in task completion. Another of CSA's commissioner duties will be to emphasize the need for these resources.

It will remain a priority of both CSA staff and commissioners to complete the entire system of classifications, standards, and test criteria for corrections peace officers.

- 5. As a board member, is your input sought? Do you feel that you have sufficient information and time to appropriately address the policy issues that come before you? Please explain any ways in which you believe your role could be improved.**

As California Counties(CSAC) representative to the CSA, past continuation high school teacher and administrator, and member of my county's Juvenile Justice Commission for several years, I offer my input to executive staff on a continuing basis. CSA staff has been encouraging in my effort. In my role as a CSA board member, I have asked CSA staff and CSAC Administration of Justice policy staff to coordinate information and share back and forth. We have established this

relationship and each staff has attended meetings of the other and formed a communications relationship. Within that process, I have grown to respect and admire the staff at CSA and the daunting tasks that lie before them. The backup information for our meetings is concise and formatted in such a way as to provide historical, progressive, and up-to-the-present information. Areas of improvement would come through additional resources. One of the tools that we are using is the formation of subcommittees to tackle specific areas of concern, to be brought back to the full board for final determination and recommendations. Additional resources would provide for more efficient and broader use of these subcommittees and not draw staff away from other responsibilities.

6. Do you believe the board meets frequently enough to accomplish its business?

I think meeting every other month is working, because it takes into consideration the varied workloads of the all-volunteer members. Here again is an area where additional staffing resources would be helpful. What I envision as the CDCR fully develops not only the increase in facility capacity, but takes on the much more complex job of providing all health, education, rehabilitation, and parole monitoring, is much more integration with established county and city regimes. The collaborative effort that was evident during the recent California Summit for Safe Communities (March 19, 2007) is illustrative of the type of energy it will take to successfully implement necessary services. More resources directed toward implementing the work plans that develop out of the collaborative ideas will create a successful build-out of program.

7. It apparently has been the practice of CSA staff to hold a telephone conference call for board members before its bimonthly meetings. Please explain the purpose of these teleconferences, whether they comply with state open meeting laws, and whether any decisions are reached among members.

The teleconferences were discontinued prior to the March 8, 2007 meeting, on advice from Legal Affairs. I found the teleconference helpful inasmuch as I like to receive information in several forms: written, audibly, and experientially if possible. We didn't to my knowledge collaborate or make decisions, as we were in remote locations and I for one didn't know what other board members were listening to the staff reports. I thought they were good because they saved the staff from having to answer individual questions from each of the 19 board members. I hope we find a way to make the teleconference call so that the calls aren't interactive, like a radio address for example.

Local Facility Standards and Inspections

8. How often does your staff inspect a county jail or juvenile hall? Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings?

Staff inspects facilities once every two years in accordance with Penal Code 6031.1 and Welfare and Institutions Code 209 and 885. In addition, I have met with our regional inspector for the northeast part of the state and conversed with her as well as other staff inspectors. Staff provides on-site assistance and oversight of construction and compliance issues, as well as other services. For my own part, I've visited both the adult facility in my own county and juvenile facilities in others. My own county's facility, Plumas County Jail, is one of four in the state that doesn't meet standard requirements. The juvenile facilities in Lassen, Fresno, and Nevada Counties, although quite disparate in size and functionality, are good, and staffed efficiently and effectively. Rural counties face different challenges providing staffing for rehabilitation, education, and health services to jails. Often, their problems aren't as much with overcrowding as with providing adequate separation of types of inmates, and personnel to serve the required needs.

9. Please explain how [suitability of Sacramento Juvenile Hall for minors] issue came to the attention of the staff and the board. What are the board's options in dealing with situations such as this? Do you believe this is an isolated problem, or do you expect other cases like this to take place?

Please contact Deputy Attorney General Douglas J. Woods (916-324-4663) regarding this question, as the matter is in litigation. To answer the second part of the question, the CSA does not have the authority to enforce its standards if it finds a facility out of compliance, and therefore can only sunshine the problems and build relationships with the counties to improve conditions. Third, overcrowding is pandemic, and I expect we'll discover many examples of facilities that are not meeting capacity standards, and a variety of solutions will be needed to address the crisis.

10. Currently, the CSA does not have any authority to enforce its standards if it finds a facility out of compliance. What do you believe the board's role should be in ensuring that CSA standards are enforced?

If the standards were made mandatory, and counties given the resources either through fiat or legislation, CSA could become more of an enforcement tool. Until that happens, however, I believe CSA should continue to act as a strict facilitator toward improving every aspect of our corrections system.

11. Please describe what steps CSA has taken to respond to [Prison Law Office lawsuit] and the status of the litigation.

Please contact Deputy Attorney General Douglas J. Woods (916-324-4663).

- 12. Among many other requirements, the CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of the inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers. What sort of oversight does the board provide to ensure that the inspections are complete and accurate?**

CSA inspectors rely on a report from the county superintendent of schools stating how the school program complies with Title 15, Section 1370 Education Program. During inspection of a juvenile facility, CSA staff will visit each academic classroom to verify the number of minors attending class, and to ensure that the number of minors does not exceed the maximum of 20 prescribed in Title 24, Section 460A.1.12 Academic Classrooms. They will also verify the number of classroom instructors teaching the minors.

As a veteran educator in continuation high school, I am a strong advocate in consistency in education for all minors. Academics in juvenile facilities can be improved with CSA oversight with a more cohesive partnership with local superintendents of schools, juvenile facilities, judges, and foster care agencies. The CSA board has historically relied on the deputy director of the Facility Standards and Operations Division to review the inspection reports for technical completeness. CSA board members have complete access to adult and juvenile inspection reports, and they can speak directly to the field representatives who are responsible for conducting inspections.

Grant Administration

- 13. What does the board do to ensure that the funds are being spent on the stated purpose of the grants? How does the board determine whether programs are achieving the desired results?**

From my relatively short time on the board, I am probably most impressed with staff's attention to oversight of grant administration and compliance. Grantees are checked through various stages of development and implementation. Outcome-based reports are required and presented at CSA meetings to the full board. Currently, I am part of a subcommittee charged with ranking Title II Formula grant applications for Native American Prevention/Intervention proposals. I was impressed by the detail in the Request For Proposals (RFP) sent to applicants. Qualifying applicants must submit detailed timelines, budgets,

and mandatory performance measures. A serious deficiency in any of these areas would disqualify the proposal at the outset. In addition the RFP requires applicants to show how their proposed project will be sustained in subsequent years.

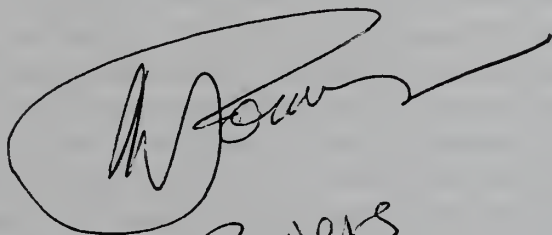
14. Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the board protect against potential conflicts of interest?

CSA board members and State Advisory Group Members must recuse themselves from the review, rating, or judging of proposals or situations in which a bias may be perceived. This recusal is most often applicable when a board member or SAG member's particular agency or department, or affiliated agencies or departments from within the same jurisdiction, are entered into competition for grant funds.

15. What is the board's role in ensuring that the state advisory group meets on a regular schedule and provides advice in a timely fashion? What, if anything, does it currently do to ensure that they do meet?

The meeting schedule for the SAG for fiscal year 07/08 has been set, and to coincide with CSA meetings whenever possible. The SAG is established as a standing Executive Steering Committee, and as such, has access to CSA staff after being directed by the full CSA board to work on items specific to juvenile justice and delinquency. The SAG Chair and Co-Chair always remain CSA members in good standing. This ensures that clear communication is well supported and will continue for the duration.

May 29, 2007

A handwritten signature in black ink, appearing to read "Bill Powers", enclosed within a large, loopy oval shape.

Bill Powers
Portola, California

CALIFORNIA LEGISLATURE

MEMBERS

ROY ASHBURN
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 11, 2007

Max L. Scott

Dear Mr. Scott:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, June 13, 2007, 2007. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by June 1st.

We would also like to receive an updated Form 700, Statement of Economic Interest, by June 1st. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Statement of Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority? How will you measure your success?*

Mission/Reorganization

On July 1, 2005, as part of the governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). The CSA has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given the additional responsibility of setting minimum standards for state correctional facilities. The CSA also assumed the responsibility (previously that of the Commission on Correctional Peace Officers' Standards and Training) of overseeing correctional peace officer standards and training.

The CSA consists of 19 members, 14 of whom are appointed by the Governor. After the 2005 reorganization, the board did not meet for nine months due to the lack of sufficient members for a quorum.

2. *Do you believe CSA has the resources necessary to carry out the responsibilities it acquired as a result of the 2005 reorganization without compromising its other obligations?*

The reorganization established a January 1, 2007 deadline for CSA to set minimum standards for state correctional facilities.

3. *Please describe the current status of this effort. If it has not been completed, please provide anticipated timeframes and any reasons for the delay.*

Prior to the 2005 corrections reorganization, the Commission on Peace Officer Standards and Training was responsible for developing selection and training standards for correctional peace officers. In a 2005 special review, the Office of the Inspector General identified a number of serious deficiencies which had prevented the Commission from meeting this obligation. In October 2006, after these functions had been transferred to CSA, the Inspector General conducted a follow-up review and reported that most of the earlier recommendations still had not been implemented and that CSA had not yet completed the job analyses necessary to establish the required training standards for correctional peace officers. According to CSA at the time of this review, the new training standards would not be released until December 2008.

4. *Please describe the current status of this responsibility; identify the anticipated timeframes for completion; and explain any unanticipated challenges that have been encountered.*

The bulk of CSA's workload is carried out by the staff although most decisions require approval by the CSA board.

5. *As a board member, is your input sought? Do you feel that you have sufficient information and time to appropriately address the policy issues that come before you? Please explain any ways in which you believe your role could be improved.*
6. *Do you believe the board meets frequently enough to accomplish its business?*

7. *It apparently has been the practice of CSA staff to hold a telephone conference call for board members before its bimonthly meetings. Please explain the purpose of these teleconferences, whether they comply with state open meeting laws, and whether any decisions are reached among members.*

Local Facility Standards and Inspections

8. *How often does your staff inspect a county jail or juvenile hall? Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?*

At its upcoming May meeting, the authority is scheduled to determine whether the Sacramento County Juvenile Hall is suitable for minors, due to overcrowding problems that affect the ability of the county to provide education.

9. *Please explain how this issue came to the attention of the staff and the board. What are the board's options in dealing with situations such as this? Do you believe this an isolated problem, or do you expect other cases like this to take place?*

Currently the CSA does not have any authority to enforce its standards if it finds a facility out of compliance.

10. *What do you believe the board's role should be in ensuring that CSA standards are enforced?*

In a lawsuit filed in April 2006, the Prison Law Office alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

11. *Please describe what steps CSA has taken to respond to the lawsuit and the status of the litigation.*

Among many other requirements, the CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of the inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

12. *What sort of oversight does the board provide to ensure that the inspections are complete and accurate?*

Grant Administration

The CSA administers various grant programs, including the juvenile justice crime prevention act and the mentally ill offenders crime reduction grant program, among other state and federal grants.

13. *What does the board do to ensure that funds are being spent on the stated purpose of the grants. How does the board determine whether programs are achieving the desired results?*
14. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the board protect against potential conflicts of interest?*

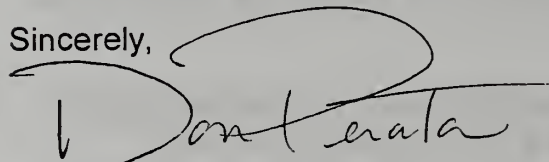
To recommend how federal juvenile justice grants are spent, the U. S. Department of Justice requires that each state have a state advisory group. The governor appoints the 15 members of this group, which advises the Corrections Standards Authority on matters related to federal juvenile justice grant programs. However, until earlier this year, the California group, now known as the State Advisory Group on Juvenile Justice and Delinquency, had not met for several years.

15. *What is the board's role in ensuring that the state advisory group meets on a regular schedule and provides advice in a timely fashion? What, if anything, does it currently do to ensure that they do meet?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420 State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,



DON PERATA

DP:MG

Max Scott
Responses

Max L. Scott

May 24, 2007

Senator Don Perata

MAY 30 2007

Don Perata
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Mr. Perata:

In response to your correspondence dated May 11, 2007 my answers to your questions are as follows:

1. When I accepted the invitation to serve on the Corrections Standards Authority, I assumed my 45 years of experience in working with juvenile delinquents could possibly be of help in the implementation of the Governor's rehabilitative model for California Youth Authority. I consider the normative social treatment model endorsed by the Governor to be a move in the right direction toward an evidenced-based treatment model.

I would measure our success based upon objective measures indicating movement from a custodial to a treatment model in all closed settings. The personal safety of the wards in placement must be of primary concern.

2. I am not sure CSA has the resources necessary to carry out the Governor's reorganization plans. While I believe the right questions are being asked, it will be a monumental task to change from custody to a more treatment oriented philosophy in the institutions throughout the state. (See attachment A.)
3. I am favorably impressed with some of the efforts that are being implemented to measure risk assessment for all youth in residential facilities, efforts to monitor and eliminate overcrowding in all facilities, and efforts to provide a more safe

Senate Rules Committee

MAY 31 2007

Appointments

living environment for wards in placement. I am also pleased with the intensive training that is being provided staff. However, regardless of the material discussed in an academic setting, on-the-job training is probably the most effective staff training.

4. I do not have information adequate to respond to this question.
5. I have not been with the CSA group long enough to have offered much in the way of suggestions and direction. Most of my time has been attempting to become familiar with the material and tasks assigned the CSA group. I believe my contribution will be in advocating smaller living units, suggesting ways to reduce youth-on-youth violence, and encourage a greater emphasis on teaching good work habits which are absolutely essential for employment after incarceration.
6. The frequency of the board meetings is adequate to conduct the business at hand.
7. I find no fault in CSA staff holding telephone conference calls prior to the bimonthly meetings when only used for clarification and gathering more in-depth information prior to making recommendations and suggestions at the regular board meetings.
8. Our staff make weekly visits to various juvenile halls and we are quite familiar with the facilities and conditions. Our general feeling is that the living conditions are too crowded. There is limited opportunity for the development of positive personal relationships with the wards. Also, although considered politically incorrect, the living environment could be significantly safer if the wards were ethnically separated.
9. I suspect the problems identified at Sacramento County Juvenile Hall are not unique to that facility.
10. I believe the CSA standards should be enforced, but it is my opinion, that at this point, they are just recommendations. On the other hand, I am not sure how staff at the various facilities can implement the recommended changes with the problem of overcrowding, inconsistent treatment philosophies, etc.
11. I am unfamiliar with the steps CSA has taken other than the training of staff to

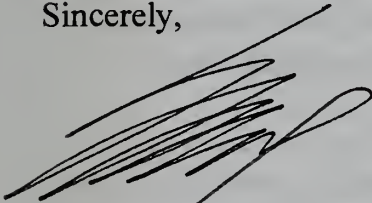
Don Perata
May 24, 2007
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address the lawsuit and litigation issues.

12. I do not have enough information to respond to this question.
- 13 & 14. I have been impressed with the way the grant funds are being allocated. The discussions that I have participated in appear to be very objective with individuals identifying themselves if they have even a possible conflict-of-interest. Where there appears to be a conflict, the individuals have no vote.
15. I have inadequate information to respond to this question.

I have reviewed Form 700, Statement of Economic Interest, you sent to me and I do not have any changes to make at this time.

Sincerely,

A handwritten signature in black ink, appearing to be 'Max L. Scott', written over a diagonal line that extends from the bottom left towards the center of the page.

Max L. Scott

Attachment



3493 Grand Ave., Chino Hills, CA 917
(909) 628-1217

June 22, 2005

Walter Allen, Director
California Youth Authority
4241 Williamsborough Drive, Suite 201
Sacramento, CA 95823

Dear Walter:

I recently received a copy of the Governor's Programmatic Description of the Rehabilitative Model for California Youth Authority. It is an excellent treatment model and parallels Boys Republic's philosophy in almost all areas. You and others recently visited Boys Republic inquiring of our experience with the normative social model being proposed for implementation in the CYA. I believe the model you've outlined is theoretically sound, evidence-based, but extremely difficult to implement with staff who have been using a different model for many years. Without being too presumptive, I would like to call your attention to a few programmatic issues you might want to consider.

- The smaller the living units the better and 25 would be preferred over the 35 being suggested.
- Increasing the ratio of staff to youth is not always desirable. There obviously must be adequate staff to cover the shifts but the fewer staff involved directly with the youth permits personal relationships and mutual trust to be established and maintained and minimizes control issues. (Youth-on-youth violence – youth-on-staff violence.)
- There's no question that academic and vocational education are critical components of any rehabilitative model. However, the development of good work habits will be a much better indicator of successful adjustment in the community than will technical knowledge and skills. The five work habits the Job Corps found to be essential for maintaining employment are:
 1. Getting to the job on time.
 2. Ability to sustain a steady work pace.
 3. Ability to get along with fellow employees.
 4. Willingness to keep your tools and equipment in proper working order and where they can be located, etc.

"The youth of a nation are the trustees of posterity."

-Benjamin Disraeli

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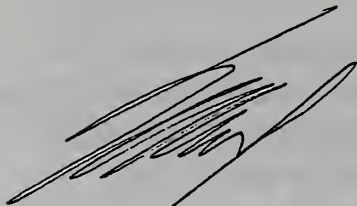
5. Willingness to take criticism and direction from a supervisor.

- I definitely agree that the group process is central to the development of a normative culture. Having small groups several times a day when problems arise is effective but only if there is a skilled, experienced facilitator leading (or monitoring) the discussion.
- I have found that having youth sign a contract is not of much value for either the youth or the staff.
- The idea of one staff or case manager being responsible for all the programs and decisions that are being made for a youth is a sound program concept. However, I think it is absolutely essential to have the youth's peers be a participant in all decisions and discussions about goals, objectives, discipline, etc.
- There exists, to some degree, in every correctional setting an unofficial, covert power structure. A "pecking order" among the clients which if not recognized, further contributes to the most destructive aspects of a correctional program. The high status youth, not staff, control the living environment. Failure on the part of staff to recognize this only further enhances the power and influence of the most delinquent youth leaders. It is interesting to note that by changing a couple of words in the U. S. Military Code of Conduct, we have a clear description of the unofficial delinquent ("inmate") system in a correctional facility. (See enclosure.)
- I would suggest that if physical restraint is going to be limited and restricted exclusively to staff, it will be difficult, if not impossible to develop a normative culture where ones peers take responsibility for themselves and the behavior of their associates. For example, if a fight were to break out between two youth, I would expect the other youth in the area to intervene and not only discourage but intervene physically to restrain the youth. If staff alone are left with that assignment, the youth will abdicate any responsibility for inappropriate conduct and leave it entirely to staff. This further divides staff from youth and reinforces the negative, unofficial norms of the delinquent system. All control functions thus become staff responsibility and only reinforce the negative delinquent system and empowers the delinquent leaders.

Walter Allen
June 22, 2005
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I submit my comments based on my experience of having worked with the theoretical treatment model you have so clearly outlined. My observations are made with no arrogance intended. I applaud what you, the Governor, and others are doing to dramatically change the Youth Authority. Any knowledgeable person would be humbled by the task facing you and those who are assigned the responsibility and challenge of implementing these changes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Max L. Scott', written over a horizontal line.

Max L. Scott
Executive Director

MLS/js

Enclosure

570-R

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